

LEGAL ADVOCACY IN CHILD DEPENDENCY AND PARENTAL RIGHTS CASES

**Fourth Edition
2004**



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Tennessee Court Improvement Program

Produced under the auspices of the Tennessee Court Improvement Program of the Tennessee Supreme Court, Administrative Office of the Courts, and the provisions of Section 13712 of Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993: Grants for State Courts

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PART I:
PRACTICE AND PROCEDURE*

**1.0 THE RIGHT TO REPRESENTATION IN JUVENILE DEPENDENCY AND
TERMINATION OF PARENTAL RIGHTS PROCEEDINGS**

1.01 The Parents' Right to Counsel

1.01 (a) Parents' Right to Counsel

Tennessee Supreme Court Rule 13 provides a right to counsel for parents in child dependency and termination of parental rights cases. Tenn. Sup. Ct. Rule 13, Sec. 1(a)(1) and (d)(2)(B). The right to counsel attaches "throughout the case." Tenn. Sup. Ct. Rule 13, Sec. 1(d).

1.01 (b) Separate Counsel for Each Respondent

Given the potential for conflict of interest between parents in these types of proceedings, both the court and appointed counsel should ask questions to determine whether each parent should have his or her own attorney. Tenn. Sup. Ct. Rule 8 (Rules of Professional Conduct), RPC 1.7 and 1.9. The court must appoint separate counsel for indigent defendants in dependency and termination proceedings "having interests that cannot be represented properly by the same counsel or when other good cause is shown." Tenn. Sup. Ct. Rule 13, Sec. 1(e)(4)(C).

1.01 (c) Obligation of Court to Advise of Right to Counsel

The Supreme Court Rule requires the court to "advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent ...and requests appointment of counsel." Tenn. Sup. Ct. Rule 13, Sec. 1(d)(2).

In all stages of juvenile court proceedings in which a respondent is by law entitled to representation by an attorney, the respondent must be expressly informed of the right to an attorney, unless that right has been waived. Where a respondent is not represented by an attorney, the court must advise the respondent in open court of the right to an attorney and of the right to appointed counsel if indigent. The court cannot proceed with a dependency or termination hearing involving an unrepresented respondent unless the respondent has waived the right to an attorney. T.R.J.P. 30(f).

If a party before the court is not represented by an attorney, the court must ascertain whether the party understands the right to an attorney. "If the party wishes to retain an attorney, the court shall continue the hearing a reasonable time to allow the party to obtain and consult with an attorney. . . If a party wishes an attorney and is financially unable to hire an attorney, the court shall appoint an attorney to represent such party in all cases in which the party is entitled to court appointed attorney by law, or in which the court in its discretion deems the appointment of an attorney appropriate. In such cases the court shall continue the hearing for a reasonable time to allow the party to consult with the appointed attorney." T.R.J.P. 28(b)(2).

* The editors wish to thank Mary Walker and Andrew Shookhoff for their enormous contributions to the development of Part One of this manual.

The term “reasonable time” must be interpreted consistently with the time limits on trial and disposition of dependency issues established by the Rules of Juvenile Procedure. If the non-indigent parent does not retain counsel within a reasonable time, the case must proceed to trial.

Special procedures exist for advising incarcerated parents in termination of parental rights proceedings of their rights, including their right to counsel. TCA § 36-1-113(f). These procedures are discussed in more detail in Section 19.05, below.

1.01 (d) Requirement of Indigency Affidavit and Finding of Indigency

When a party who is entitled to representation requests the appointment of counsel and states to the court that he or she is financially unable to obtain counsel, the party must complete an Affidavit of Indigency Form provided by the Administrative Office of the Courts (AOC). Any appointment of counsel pursuant to this rule must be based on the court’s finding that the party is indigent, “which finding shall be evidenced by a court order.” Tenn. Sup. Ct. Rule 13, Sec. 1(e)(1) and (2). (See Forms Section.)

1.01 (e) Waiver of the Right to Counsel

An indigent party may waive counsel only “with an understanding of the legal consequences of the rejection.” Tenn. Sup. Ct. Rule 13, Sec. 1(e)(3). When the indigent party chooses to waive counsel the court must comply with “all lawful obligations relating to waiver of the right to counsel” before the party may act pro se without the assistance or presence of counsel. Tenn. Sup. Ct. Rule 13, Sec. 1(f)(2). The refusal of counsel must be in writing, signed by the indigent party in the presence of the court and be made part of the record in the case. The court must also satisfy “all other applicable constitutional and procedural requirements relating to waiver of the right to counsel.” Tenn. Sup. Ct. Rule 13, Sec. 1(f).

The Rules of Juvenile Procedure establish specific inquiries that must be made before the court can accept such a refusal of counsel.

No respondent can be deemed to have waived the assistance of an attorney until:

- The entire process of notification of the right to counsel has been completed;
- A thorough inquiry into the respondent’s comprehension of the right to an attorney and into the respondent’s capacity to make the choice intelligently has been made by the court and the court has determined that the respondent thoroughly comprehends the right to an attorney, has the experience and intelligence to understand, and does understand the consequences of any waiver;
- The respondent has knowingly and voluntarily waived the right to counsel, and
- If the respondent is a child, that the child has consulted with a knowledgeable adult who has no interest adverse to the child. T.R.J.P. 30(g).

1.01 (f) Obligation of Counsel to Continue Representation Throughout Proceedings

Appointed counsel shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by a court. See Tenn. Sup. Ct. R. 14 (setting out the procedure for withdrawal in the Court of Appeals and Court of Criminal Appeals) and Tenn. Sup. Ct. R. 8, RPC 1.16. Tenn. Sup. Ct. Rule 13, Sec. 1(e)(5).

1.01 (g) Appointment of a Guardian Ad Litem to Assist in the Representation of a Mentally Incompetent Adult

In some cases, the parent’s or guardian’s mental or intellectual limitations may make it impossible for

appointed counsel to consult with the client or to get meaningful direction for representing the client. In such circumstances, it is appropriate to seek the appointment of a guardian ad litem for the client. *See* Tenn. Sup. Ct. Rule 8, RPC 1.14. Tenn. Sup. Ct. Rule 13 does not provide for compensation of a guardian ad litem for a parent.

1.02 The Child's Right to Representation

The juvenile court judge is required by both statute and court rule to appoint a guardian ad litem for a child in any case where the interests of the child require a guardian ad litem or in any proceeding in which:

- The child has no parent, guardian or custodian appearing on the child's behalf;
- The child's interests may conflict with those of the parent, guardian or custodian;
- The child is alleged to be abused;
- The proceeding is based on an allegation of harm falling within the mandatory child abuse reporting laws (i.e., an allegation that the child is suffering from or has sustained any wound, injury, disability, or physical or mental condition caused by brutality, abuse or neglect); or
- The proceeding is a contested termination of parental rights proceeding.

Tenn. Sup. Ct., Rule 13, Sec 1(d)(2)(c) and (d). T.C.A. §§ 37-1-149(a), 37-1-403; T.R.J.P. 37(b), (c); 39(e).

The court may appoint a guardian ad litem for a child on application of a party or on its own motion. Virtually all dependency and neglect and termination of parental rights proceedings require appointment of a guardian ad litem for the child based on one of these five criteria.

Appointment of a guardian ad litem is required, whether the petitioner is the Department of Children's Services (DCS), a licensed child placing agency, or a private party. The statute contemplates that the guardian ad litem is a separate entity and may not be one of the parties to the proceeding or the party's employee or representative. T.C.A. § 37-1-149.

Prior to taking appointments, a guardian ad litem must receive training appropriate to the role. T.C.A. §§ 37-1-149(a)(2).

1.03 Tennessee Supreme Court Rule 40: Guidelines For Guardians Ad Litem For Children In Juvenile Court Neglect, Abuse And Dependency Proceedings

1.03 (a) Application

Tennessee Supreme Court Rule 40 was enacted February 5, 2002. The guidelines set forth the obligations of lawyers appointed to represent children as guardians ad litem in juvenile court neglect, abuse and dependency proceedings pursuant to T.C.A. § 37-1-149, Rules 37 of the Tennessee Rules of Juvenile Procedure, and Supreme Court Rule 13. The adoption of the guidelines intended that they not be applied to proceedings in other courts that involve child custody or related issues. Tenn. Sup. Ct. Rule 40(a).

1.03 (b) Definitions.

As used in Rule 40, unless the context otherwise requires:

- Guardian ad litem is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child's concerns and preferences are effectively advocated.
- Child's best interest refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:
 - (i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care;
 - (ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;
 - (iii) the child's need for family affiliation;
 - (iv) the child's social needs;
 - (v) the child's educational needs;
 - (vi) the child's vulnerability and dependence upon others;
 - (vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;
 - (viii) degree of risk;
 - (ix) the child's need for stability of placement;
 - (x) the child's age and developmental level, including his or her sense of time;
 - (xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;
 - (xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;
 - (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;
 - (xiv) the importance of continuity in the child's life;
 - (xv) the home, school and community record of the child;
 - (xvi) the preferences of the child;
 - (xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and
 - (xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in 36-6-106.

Tenn. Sup. Ct. Rule 40(b).

1.03 (c) General Guidelines

- The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.
- Establishing and maintaining a relationship with the child is fundamental to representation. The guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child's caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for

whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner.

- The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order. The guardian ad litem shall represent the child at preliminary, adjudicatory, dispositional and post-dispositional hearings, including the permanency plan staffings, court reviews, foster care review board hearings and permanency hearings. The guardian ad litem should maintain contact with the child and be available for consultation with the child between hearings and reviews. For a child who is very young or severely mentally disabled, the guardian ad litem should regularly monitor the child's situation through contacts with the child's caretakers and others working with the child and through periodic observations of the child.

Tenn. Sup. Ct. Rule 40(c).

1.03 (d) Responsibilities and duties of a lawyer guardian ad litem.

The responsibilities and duties of the guardian ad litem include, but are not limited to the following:

- Conducting an independent investigation of the facts that includes:
 - (i) Obtaining necessary authorization for release of information, including an appropriate discovery order;
 - (ii) Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case;
 - (iii) Reviewing and obtaining copies of Department of Children's Services' records;
 - (iv) Reviewing and obtaining copies of the child's psychiatric, psychological, substance abuse, medical, school and other records relevant to the case;
 - (v) Contacting the lawyers for other parties for background information and for permission to interview the parties;
 - (vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;
 - (vii) Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records;
 - (viii) Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;
 - (ix) Reviewing relevant photographs, video or audio tapes and other evidence; and
 - (x) Engaging and consulting with professionals and others with relevant special expertise.
- Explaining to the child, in a developmentally appropriate manner:
 - (i) the subject matter of litigation;
 - (ii) the child's rights;
 - (iii) the court process;
 - (iv) the guardian ad litem's role and responsibilities;
 - (v) what to expect before, during and after each hearing or review;
 - (vi) the substance and significance of any orders entered by the court and actions taken by a review board or at a staffing.

- Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.
- Assessing the needs of the child and the available resources within the family and community to meet the child's needs.
- Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.
- Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.
- Advocating the position that serves the best interest of the child by:
 - (i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;
 - (ii) Participating in depositions, discovery and pretrial conferences;
 - (iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;
 - (iv) Making opening statements and closing arguments;
 - (v) Calling, examining and cross-examining witnesses, offering exhibits and introducing independent evidence in any proceeding;
 - (vi) Filing briefs and legal memoranda;
 - (vii) Preparing and submitting proposed findings of facts and conclusions of law;
 - (viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;
 - (ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;
 - (x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;
 - (xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.
- Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.
- Ensuring that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.
- Providing representation with respect to appellate review including:
 - (i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;
 - (ii) filing an appeal when appropriate; and
 - (iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party.

Tenn. Sup. Ct. Rule 40(d).

1.03 (e) Responsibilities and duties of a guardian ad litem when the child's best interests and the child's preferences are in conflict.

- If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:
 - (i) Fully investigate all of the circumstances relevant to the child's position, marshal every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;
 - (ii) Discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.
- If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian ad litem shall pursue one of the following options:
 - (i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest.
 - (ii) Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child.
- If, under the circumstance set forth in sub-section (b), the guardian ad litem is of the opinion that he or she must advocate a position contrary to the child's wishes and the court has refused to provide a separate lawyer for the child to help the child advocate for the child's own wishes, the guardian ad litem should:
 - (i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position;
 - (ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child's position.

Tenn. Sup. Ct. Rule 40(e).

1.03 (f) Guardian ad litem to function as lawyer, not as a witness or special master.

A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Tennessee Supreme Court Rule 8, RCP 3.7.

A guardian ad litem is not a special master, and should not submit a report and recommendations to the court.

The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

Tenn. Sup. Ct. Rule 40(f).

1.04 Compensation for Counsel for Parents, Guardians ad Litem for Children and Counsel for Children Appointed Pursuant to Tenn. Sup. Ct. Rule 40(e)(2)

Supreme Court Rule 13 applies to appointments of counsel for parents, guardians ad litem for children and counsel for children, appointed pursuant to Tenn. Sup. Ct. Rule 40(e)(2), in indigency cases. The Rule sets the hourly compensation rate at forty dollars per hour for time reasonably spent in trial preparation (time spent preparing the case) and fifty dollars per hour for time reasonably spent “in court” (time spent before the judge on the particular case). Tenn. Sup. Ct. Rule 13, Sec. 2(c)(1) and (2). Supreme Court Rule 13 does not apply to appointment or compensation of counsel for a non-parent or a guardian ad litem appointed for an incompetent parent in dependency and termination of parental rights cases.

In dependency proceedings, there are two separate phases in which the attorney for the parent, guardian ad litem for the child and counsel for the child, appointed pursuant to Tenn. Sup. Ct. Rule 40(e)(2), are compensated. Compensation for each phase should be submitted on separate claim forms.¹ A copy of the appointment order must be attached to the claim form. Tenn. Sup. Ct. Rule 13, Sec. 6(a)(3). The two phases are:

- **Adjudicatory/Dispositional Phase:** from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings. The maximum compensation for this phase is \$500. Tenn. Sup. Ct. Rule 13, Sec. 2 (d)(4)(A). If the court certifies the case for this phase as complex or extended the maximum compensation is \$1000. Tenn. Sup. Ct. Rule 13, Sec. 2(e)(3)(A).
- **Post-Dispositional Phase:** post-disposition through permanency for the child, including foster care review board hearings, post-dispositional court reviews and permanency hearings. The maximum compensation for this phase is \$750. Tenn. Sup. Ct. Rule 13, Sec. 2 (d)(4)(B). If the court certifies the case for this phase as complex or extended the maximum compensation is \$1500. Tenn. Sup. Ct. Rule 13, Sec. 2(e)(3)(B).

The AOC will compensate attorneys a maximum \$1,000 (or \$2,000 if the court certifies that the case is complex or extended) in the following proceedings:

- Termination of parental rights hearing; Tenn. Sup. Ct. Rule 13, Sec. 2 (d)(4)(C). {Certified complex or extended, Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(3)(C)}.
- Direct or interlocutory appeal to the Court of Appeals; Tenn. Sup. Ct. Rule 13, Sec. 2 (d)(3)(C). {Certified complex or extended, Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(3)(C)}.
- Direct or interlocutory appeal to the Supreme Court. Tenn. Sup. Ct. Rule 13, Sec. 2 (d)(3)(D). {Certified complex or extended, Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(3)(C)}.

In order to be compensated for each proceeding, separate claim forms must be filed. Each claim must include a copy of the appointment order. Tenn. Sup. Ct. Rule 13, Sec. 6(a)(2) and (3). To receive compensation above the maximum the attorney must submit a motion requesting the court, in which representation was provided, to certify the case complex or extended. The motion must include “specific

¹ The form, *Claim for Fees for Guardian Ad Litem or Attorney Representing Parents in Dependency and Termination of Parental Rights Cases*, is available through the Administrative Office of the Courts (AOC) or may be found at www.tsc.state.tn.us; click on “Information”, “Forms and Publications” and scroll down to “Forms”. Attorneys should read Sup. Ct. Rule 13 before filing for compensation or other expenses.

factual allegations demonstrating that the case is complex or extended.” Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(1). Rule 13 states that the following, while neither controlling nor exclusive, indicate the type of circumstances that may support a complex or extended certification:

- The case involved complex scientific evidence and/or expert testimony.
- The case involved multiple defendants and/or numerous witnesses.
- The case involved multiple protracted hearings.
- The case involved novel and complex legal issues.

Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(1)(A)-(D).

If the motion is granted, an order stating the specific facts supporting the finding or incorporating by reference the motion that includes the specific facts must be forwarded to the AOC with the claim form. The order must be signed by the judge “contemporaneously” with the approval of the claim form in order to qualify for payment. A **nonc pro tunc order will not support payment of complex or extended claims**. Tenn. Sup. Ct. Rule 13, Sec. 2 (e)(1)(E). All complex or extended payments must be approved by the director of the AOC. If a claim is not approved the claim will be transmitted to the chief justice whose decision is final.

In cases in which the parent is not indigent, the appointed guardian ad litem or counsel for the child is entitled to “reasonable compensation” to be assessed against either the county or the parents or legal guardians. T.C.A. § 37-1-150(a)(3) and (d).

1.05 Reimbursement of Expenses Incident to Representation

Supreme Court Rule 13 provides for payment of expenses incident to appointed counsel’s representation. Tenn. Sup. Ct. Rule 13, Sec. 1(a)(1)(D).

1.05 (a) Reimbursement of Expenses Without Prior Approval.

The AOC will reimburse the following expenses without prior approval of the court or the director of the AOC if reasonably necessary to the representation of the party:

- Long distance telephone charges, if supported by a log showing the date of the call, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth (1/10) hour segments.
- Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities.
- Lodging where an overnight stay is required at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates. (In-state rates: www.state.tn.us/finance/act/travel.html and out-of-state rates: www.state.tn.us/finance/act/policy.html.)
- Meals in accordance with the Judicial Department travel regulations if supported by a receipt, where an overnight stay is required.
- Parking at actual costs up to ten dollars per day if supported by a receipt.
- Photocopying - black and white copies
 - In-house copying at a rate not to exceed seven cents (\$0.07) per page.
 - Actual cost of outsourced copying if supported by a receipt, at a rate not to exceed ten cents (\$0.10) per page.

- Actual cost of providing to client a copy of appellate briefs and opinion.
- The cost of providing to the indigent party a copy of the court file or transcript will not be reimbursed once the appeal is complete because the original file and transcript belong to the client.
- Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed \$500.
- Photocopying - color copies
 - In-house color copying at a rate not to exceed one dollar (\$1.00) per page.
 - Actual cost of outsourced color copies at a rate not to exceed \$1.00 per page if supported by a receipt.
 - Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed \$500.
- Computerized research at actual cost for case-related legal and internet research if supported by receipts. If actual costs are not incurred, compensation will be limited to time spent conducting the search. Pro rata cost of subscription(s) will not be paid.
- Miscellaneous expenses such as postage, commercial delivery service having computer tracking capacity, film, or printing will be compensated at actual cost, not to exceed the fair and reasonable market value, if accompanied by a receipt. Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total miscellaneous expenses will exceed \$250.

Tenn. Sup. Ct. Rule 13, Sec. 4(a)(3).

1.05 (b) Reimbursement of Expenses Only With Prior Approval.

Counsel may be reimbursed for other expenses not included in Tenn. Sup. Ct. Rule 13, Sec. 4(a)(3), including out of state travel, only upon **prior approval by the judge** presiding over the case **and by the AOC director**. The motion requesting prior approval must “include both an itemized statement of the estimated or anticipated costs and specific factual allegations demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party. “Tenn. Sup. Ct. Rule 13, Sec. 4(b)(2).

If the motion is granted, the court order must “either recite the specific facts demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party or incorporate by reference and attach the motion that includes the specific facts demonstrating that finding.” Tenn. Sup. Ct. Rule 13, Sec. 4(b)(3). The order and attachments must be submitted to the AOC director for prior approval **before** any expenses are incurred. Tenn. Sup. Ct. Rule 13, Sec. 4(b)(4).

1.05 (b)(i) Court Reporters

When requesting reimbursement for the expense of a court reporter the per diem rate may not exceed the maximum Judicial Department rate for the judicial district; and the court reporter must have a delegated purchase authority (DPA) on file with the AOC. Counsel should contact the AOC to obtain a list of court reporters who have a DPA on file and who have agreed to provide services at the Judicial Department rates. If counsel obtains a court reporter who agrees to reimbursement at the maximum Judicial Department rates and does not have a DPA on file, that reporter may submit a DPA to the AOC prior to reimbursement.

105 (b)(ii) Transcripts in Termination of Parental Rights Appeals.

In a termination of parental rights appeal involving the Department of Children's Services, the Department by internal policy, should order a copy of the transcript upon notice of the appeal. Tenn. Sup. Ct. Rule 13, Sec. 4(c) provides that the AOC director is authorized to reimburse the Department for the transcript expense at the Judicial Department rate **without** obtaining prior approval by court order.

In a termination of parental rights appeal that does not involve the Department of Children's Services, the indigent appellant may request the reimbursement for the expense of the transcript pursuant to the procedures outlined in Section 1.05(b) above at the Judicial Department rate. Prior to requesting the transcript counsel should contact the AOC regarding the current per-page rate for the transcript. In addition the court reporter must have a DPA on file with the AOC.

1.05 (b)(iii) Compensation of Experts

Supreme Court Rule 13 provides for the "appointment and compensation of experts, investigators, and other support services for indigent parties" in child dependency and termination of parental rights termination proceedings. Tenn. Sup. Ct. Rule 13, Sec. 1(a)(1)(E).

The AOC will pay for the costs of such expert services as expenses incident to representation. Tenn. Sup. Ct. Rule 13, Sec. 4(a)(2) (Note: Tenn. Sup. Ct. Rule 13, Sec. 5 applies only to criminal cases but counsel should refer to this section regarding the procedure and required findings for obtaining reimbursement and maximum hourly rates for specific services.) Counsel may be reimbursed for expert services only upon motion and prior approval by the judge presiding over the case and **prior approval by the AOC.**

The attorney must file a motion with the court that includes the following:

- the nature of the services (the type of expert and the service being sought);
- the name, address, qualifications and licensure status of the person providing the service;
- the means, date, time and location at which the services will be provided;
- a statement of the itemized costs of the services, including the hourly rate, and the amount expected for additional or incidental costs;
- the particularized need for the service requested; and
- if the expert is not located within 150 miles of the court where the case is pending, an explanation of the efforts made to obtain the services of a provider within 150 miles.

The order authorizing the expert services must contain the following:

- a finding that the service is necessary to ensure the protection of the client's constitutional right;
- a finding of the particularized need for the service
- the specific facts that demonstrate the need;
- name and address of the person approved to provide the service (If the expert is not located within 150 miles of the court where the case is pending, an explanation of the efforts made to obtain the services of a provider within 150 miles);
- a finding that the hourly rate to be charged for the service is reasonable in that it is comparable to the rates charged for similar services. (see, Sup. Ct. Rule 13, Sec. 5(d) for maximum hourly rates per service);
- The dollar amount of services being approved.

The court may satisfy the requirements by incorporating by reference and attaching the motion that includes the specific facts supporting the particularized need. The order and attachments should be submitted to the AOC director for prior approval. If the director denies approval, the claim will be submitted to the chief justice whose decision is final.

1.05 (c) Spoken Foreign Language Interpreters and Translators

Supreme Court Rule 13 provides that the “reasonable costs associated with an interpreter’s and/or translator’s services will be compensated when a court finds, upon motion of counsel or sua sponte, that an indigent party has limited English proficiency (“LEP”). Prior approval of the AOC director is not required. Sup. Ct. Rule 13, Sec. 4(d).

The term “interpret” refers to the process of transmitting the spoken word from one language to another. The term “translate” refers to the process of transmitting the written word from one language to another. Tenn. Sup. Ct. Rule 13, Sec. 4(d)(1). The Rule provides for the compensation rates and expenses for the interpreter or translator. Claims must be submitted by the interpreter or translator on forms provided by the AOC, signed by the court or counsel and accompanied by the court’s order appointing the interpreter/translator. Tenn. Sup. Ct. Rule 13, Sec. 4(d).

In dependency and termination of parental rights cases, if a party with limited English proficiency qualifies for a court appointed attorney, he or she also qualifies for payment of the services of an interpreter or translator for all court proceedings, including adjudicatory, dispositional, ratification, foster care review board, permanency and termination of parental rights hearings and for any other attorney-client communication that occurs outside of court. Rule 13 does not include payment for interpreter services for permanency plan staffings or other meetings conducted by the Department of Children’s Services. The Department is responsible for providing interpreters for those meetings.

Tenn. Sup. Ct. Rule 13, Section (4)(d)(10) provides a mechanism for reimbursing counties that choose to utilize credentialed interpreters on a full-time or part-time basis.

See the AOC website for information and forms regarding interpreters and translators at www.tsc.state.tn.us.

Payment for an interpreter for a hearing impaired person is provided for pursuant to T.C.A. § 24-1-211. If the interpreter is appointed by the court, the interpreter’s fee is paid out of the county funds.

1.05 (d) Filing and Review of Claims for Compensation and Reimbursement of Expenses

All claims should be filed with the clerk’s office and reviewed and approved by the judge who presided over the final disposition of the case. Each claim must be supported by a copy of the order of appointment or order authorizing the expenditure. In cases where prior approval of the AOC director or chief justice is required, the approval must also be attached. Tenn. Sup. Ct. Rule 13, Sec. 6(a)(1)-(3).

Claims in the adjudicatory/dispositional phase of the dependency case and the termination of parental rights case must be filed no later than 180 days after disposition of the case. Claims in the post-dispositional phase of the dependency case must be filed within 180 days from the last activity related to the case. Unless filed within the 180-day period, the claim will be deemed waived and will not be paid. This provision becomes effective January 1, 2005. Tenn. Sup. Ct. Rule 13, Sec. 6(a)(1)-(3).

The AOC will examine and audit all claims for compensation and reimbursement to insure compliance with Rule 13. The determination to pay a claim will be made by the AOC director and will be final, except where review by the chief justice is required. Any claim denied in whole or substantial part by the director shall be reviewed by the chief justice. The determination of the chief justice is final. Tenn. Sup. Ct. Rule 13, Sec. 6(b).

1.06 Appointment of a Court Appointed Special Advocate

The court may also appoint a non-lawyer special advocate trained in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings. T.C.A. § 37-1-149(b)(1). The court appointed advocate “shall conduct such investigation and make such reports and recommendations pertaining to the welfare of the child as the court may order or direct.” T.C.A. § 37-1-149(b)(2).

Unlike the guardian ad litem, the CASA may testify as a witness. Reports and recommendations of the CASA must be made available to all the parties but can only be admitted into evidence pursuant to applicable evidentiary rules. The CASA is not, simply by virtue of being a CASA, qualified as an expert witness, nor is the testimony of a CASA exempt from the rules of evidence, including those regarding hearsay.

CASA reports often include both personal observations of the CASA (e.g., interactions observed between the parent and child during visits, physical conditions of households visited by the CASA) and hearsay (e.g., what teachers, relatives and neighbors told the CASA). Parties often stipulate to the admission of the CASA report or fail to object when it is proffered. Advocates should keep in mind that CASA reports are generally inadmissible into evidence at adjudicatory hearings and at termination of parental rights hearings absent a stipulation by the parties. The information in the report can be presented to the court in other ways: witnesses and other sources of information can be subpoenaed to court for the hearing.

2.0 DEPENDENCY PROCEEDINGS: CAUSES OF ACTION, JURISDICTION AND VENUE**2.01 Dependency Causes of Action**

A “dependent and neglected child” is a child under the age of eighteen:

- Who is without a parent, guardian or legal custodian;
- Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for the child;
- Who is under unlawful or improper care, supervision, custody or restraint by any person or organization;
- Who is unlawfully kept out of school;
- Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional, or hospital care;
- Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;
- Who is in such condition of want or suffering or improper guardianship or control as to injure or endanger the morals or health of the child or of others;
- Who is suffering from, has sustained or is in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;
- Who has been in the care of a person or agency not related to the child by blood or marriage for 18 continuous months in the absence of a court order and the person or agency has not initiated custody or adoption proceedings;
- Who is or has been allowed, encouraged, or permitted to engage in prostitution or obscene or pornographic activity and whose parent, guardian or other custodian neglects or refuses to protect the child from further such activity.

T.C.A. § 37-1-102 (b)(1), (4), and (12).

“Severe child abuse,” a finding of which has a number of special consequences discussed in Sections 5.03, 9.06, 10.04, 18.02 and 18.04, below, is defined as:

- The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death;
- The knowing use of force on a child that is likely to cause great bodily harm or death;
- Specific brutality, abuse or neglect towards a child which in the opinion of qualified experts has or will reasonably be expected to produce severe psychosis, neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child’s ability to function adequately in the child’s environment and the knowing failure to protect a child from such conduct; or
- The commission of any act towards the child prohibited by T.C.A. §§ 39-13-502-504 (aggravated rape, rape, aggravated sexual battery), T.C.A. § 39-13-522 (rape of a child), T.C.A. § 39-15-302 (incest) and T.C.A. § 39-17-1005 (especially aggravated sexual exploitation of a minor);
- The knowing failure to protect a child from any of the above described conduct.
- Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in T.C.A. § 39-17-403(d)(2), is occurring.

T.C.A. § 37-1-102(b)(21). Yet to be determined in Tennessee is whether the definition of a child for purposes of dependency proceedings includes a fetus. Advocates are referred excellent discussions of this

issue by two courts in other states, reaching opposite conclusions, in *State of Wisconsin ex rel. W. v. Zruzicki*, 561 N.S.2d 729 (Wisc. 1997) and *Whitner v. South Carolina*, 492 S.E.2d 777 (S.C. 1997).

2.02 Jurisdiction in Dependency Proceedings

The juvenile court has exclusive original jurisdiction over dependency proceedings. T.C.A. § 37-1-103(a)(1). The filing of a dependency proceeding in juvenile court generally authorizes the juvenile court to enter orders that preempt or supercede the jurisdiction of circuit or chancery court over custody proceedings in those courts. *DHS v. Gouvitsa*, 735 S.W.2d 452 (Tenn. App. 1987); *Arnold v. Gouvitsa*, 735 S.W.2d 458 (Tenn. App. 1987). See also *Marmino v. Marmino*, 238 S.W.2d 105, 108 (1950).

There are two exceptions to the juvenile court's otherwise exclusive jurisdiction over dependency and neglect proceedings: (1) when an adoption petition is filed; and (2) when jurisdiction of the child's case is already established in a court in another state pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.

The filing of an adoption petition suspends any juvenile court proceeding (other than unruly or delinquency proceedings) and confers on the adoption court exclusive jurisdiction over allegations of abuse or neglect regarding the child during the pendency of the adoption proceeding. T.C.A. § 36-1-116(f)(1),(2). Parties in any juvenile court proceeding suspended by the filing of an adoption proceeding, including the state and the guardian ad litem, may intervene in the adoption proceeding.

The Uniform Child Custody Jurisdiction and Enforcement Act supercedes the juvenile court's jurisdiction if Tennessee does not have jurisdiction of a particular child custody proceeding as described in the Act. T.C.A. § 36-6-201, et. seq. The Act provides that a juvenile court has temporary emergency jurisdiction if the child has been abandoned and is physically present in Tennessee, or if it is necessary in an emergency to protect the child because the child, a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. See *P.E.K. v. J.M.*, 52 S.W.3d 653, (Tenn. App. 2001).

2.03 Venue in Dependency Proceedings; Transfer Between Courts

A dependency proceeding may be commenced in the county in which either:

- The child resides;
- The child is present when the proceeding is commenced; or
- An adoption petition regarding the child is pending.

T.C.A. §§ 37-1-111(a), (c); 36-1-116(f)(1), (2). Ordinarily, a child's residence is considered to be that of his or her parent, guardian or legal custodian. However, there may be circumstances in which a child can establish a county of residence separate and apart from that of the parent, guardian or legal custodian. The juvenile court judge may, on motion of any party or on the court's own motion, transfer the dependency and neglect proceeding to the court in the county of the child's residence after the adjudication. T.C.A. § 37-1-112; T.R.J.P. 28(g).

If a juvenile court proceeding is commenced and a proceeding involving the child's custody is also commenced or pending in the circuit, chancery or general sessions court exercising domestic relations jurisdiction, the juvenile court, on motion of a party or on its own motion after an adjudication making specific findings of fact pursuant to § 37-1-129(a)(2) and after ordering any essential services for the child

and family, may transfer the custody proceeding to the court where the pending matter has been commenced. Also a case may be transferred if the residence of the child changes during the pendency of the juvenile court proceedings. The transfer shall only occur upon a finding of fact by the transferring court that the transfer will be in the best interest of the child, will promote judicial economy, will provide a more reasonable or convenient forum, or for other good cause. The transferring court may communicate with the receiving court concerning the transfer of the case. The transfer of the custody proceeding to another court exercising domestic relations jurisdiction (except to another juvenile court) shall not occur if the case involves allegations of dependency, neglect or abuse and the child is in the custody of the department of children's services. T.C.A. § 37-1-112(b). The juvenile court shall retain jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care as may be mandated by federal or state law. This provision does not establish concurrent jurisdiction for any other court to hear juvenile cases, but merely permits courts exercising domestic relations jurisdiction to make custody determinations. Transfers shall be at the sole discretion of the juvenile court. T.C.A. § 37-1-103(c). An appeal of the decision to transfer shall be to the court of appeals. T.C.A. § 37-1-112(d).

Tennessee juvenile courts may also transfer to or receive from courts in other states dependency and neglect proceedings in situations in which the state of the child's residence changes to or from Tennessee. T.C.A. §§ 37-1-142 - 145. These "court-to-court" transfers are different from transfers between one state agency and another under the Interstate Compact Act. (T.C.A. § 37-4-201, et seq.)

3.0 INITIATION OF DEPENDENCY CASES: PETITION; SUMMONS; REFERRAL TO THE DEPARTMENT OF CHILDREN'S SERVICES

3.01 The Filing of a Petition; Who May File; Contents

Juvenile dependency proceedings are initiated by the filing of a petition in juvenile court. Petitions may be filed by the Department of Children's Services (DCS), private childcare agencies, or private parties. T.C.A. § 37-1-119; T.R.J.P. 8(a). While a non-lawyer may file a petition or pleading on his or her own behalf, only a lawyer may file a petition or pleading on behalf of DCS or another agency.

There is some confusion as to whether a private party can be denied the opportunity to file a dependency petition. While the Rules of Juvenile Procedure contemplate an intake process that allows a pre-petition review of the circumstances of the case by court staff (T.R.J.P. 8), it is doubtful that a court can constitutionally deprive a person of the right to file a dependency petition based on the court's judgment that a petition is not warranted or appropriate under the facts. The remedy for an improperly filed petition lies with the judge or referee who can dismiss the petition if it is defective or if it fails to state a cause of action.

With the consent of the parties and approval of the judge, juvenile court staff can "informally adjust" a dependency complaint or petition by providing counseling, advice or referrals for services to the child and family. T.C.A. §§ 37-1-110; 37-1-128(b)(1); T.R.J.P. 8(d); T.R.J.P. 12(b); T.R.J.P. 13(c); T.R.J.P. 14. However, the court must still report the allegations to the Department of Children's Services as discussed in Section 3.02, below, and no informal adjustment should be made until that investigation is completed and the Department has been given an opportunity to intervene.

The petition must:

- Be verified (signed under oath), but may be based upon "information and belief"-- the petitioner need not have first hand knowledge of the facts alleged;
- Set forth in plain and concise language the factual allegations supporting the petition including:
 - (1) The name, resident address and date of birth of the child if known;
 - (2) The name and resident addresses, if known, of the parents, guardian or custodian of the child and of the child's spouse, if any;
 - (3) The date, manner and place of the acts alleged as the basis for dependency and neglect;
 - (4) That the child is dependent and neglected and that it is in the best interest of the child that the proceeding be brought;
 - (5) Whether the child is "in custody" (shelter care, foster care, detention, the custody of an agency), and if so, the location of the custodian and the time the child was taken into custody.

T.R.J.P. 9; T.C.A. § 37-1-120. If the petition is filed by DCS and the Department is seeking custody, the Department must comply with the reasonable efforts requirements of T.C.A. § 37-1-166, discussed at Section 5.0, below.

3.02 Requirement of D.C.S. Referral in Cases Where DCS is Not Petitioner

A person or agency other than DCS may file a complaint or petition in juvenile court alleging a child to be dependent and neglected. In those cases, the court must promptly refer the case to DCS to investigate

the social conditions of the child and to report the findings to the court to aid the court in its disposition. T.R.J.P., Rule 13(a); T.C.A. § 37-1-128(b)(1).

Unless emergency removal is necessary, the Department must investigate the case within 30 days and, if appropriate, offer services to the family or child. T.C.A. § 37-1-166(f).

3.03 Issuance of Summons

After the petition is filed, the court must set a hearing date and direct that a summons issue to:

- The parents, guardians or other custodian of the child;
- The guardian ad litem for the child;
- The child, if the child is fourteen years or older;
- Any other persons who appear to be proper or necessary parties to the proceeding.

T.C.A. § 37-1-121(a); T.R.J.P. 10(a). The court has an obligation to attempt to identify the biological father and to serve him with the summons. However, in a case in which an alleged but non-legitimated father has not had a substantial relationship with the child, the case can be brought to final hearing without serving the alleged biological father and should not be unnecessarily delayed just to obtain service. The distinction between those non-legitimated fathers who have substantial relationships with their children and those who do not is one of constitutional significance. Compare, e.g., *Stanley v. Illinois*, 405 U.S. 645 (1972) and *Caban v. Mohammed*, 441 U.S. 380 (1978), with *Quilloin v. Wolcott*, 434 U.S. 246 (1978), and *Lehr v. Robinson*, 463 U.S. 248 (1983). See also discussion of Tennessee case law in Part II, Section 2, of this manual.

The summons must include:

- A copy of the petition (or, in the case of service by publication, a statement of the general nature of the allegations);
- A statement of the date, time and place of the hearing on the petition;
- A statement requiring the person to whom the summons is directed to appear before the court at that date and time to answer the allegations in the petition. (There is no requirement that a written answer or other written response be made to the petition. T.R.J.P. 20.)

T.C.A. § 37-1-121(a), (b); T.R.J.P. 10(a). The summons can include an endorsement by the judge or referee requiring that the child appear at the hearing and directing the child's parent, guardian or custodian to bring the child to the hearing. T.C.A. § 37-1-121(c); T.R.J.P. 10(b). In emergency circumstances discussed below, the summons can include an endorsement by the judge or referee ordering that a law enforcement officer serve the summons and take the child into immediate custody. T.C.A. § 37-1-121(d).

3.04 Service of Summons; Who May Serve

Service of the summons may be made as follows:

- (1) A party who can be found within Tennessee must be served personally at least three days before the hearing (other than a preliminary hearing).
- (2) A party who is within Tennessee but cannot be found, but whose address is known or with

reasonable diligence can be ascertained may be served by registered or certified mail to the party's address at least five days before the hearing.

- (3) A party who can be found out of state must be served:
 - (a) by delivering the summons personally to the party at least five days before the hearing; or
 - (b) by registered or certified mail at least five days before the hearing; or
 - (c) by service on the Secretary of State. (T.C.A. § 37-1-123(a); T.R.J.P. 10(c)(1); T.C.A. § 20-2-205, et seq.)
- (4) A party who cannot be found or whose post office address cannot be ascertained "after reasonable effort" can be served by publication in accordance with T.C.A. §§ 21-1-203 and 204, with the hearing date to be at least five days after the date of the last publication. T.C.A. § 37-1-123(b); T.R.J.P. 10(c)(2).

Any "suitable person under the direction of the court" may serve a summons. T.C.A. § 37-1-123(c); T.R.J.P. 10(c)(3). A DCS social worker or any other adult can meet this qualification so parties are not dependent on the sheriff or court staff to serve process. Service of process can be achieved by leaving the summons with any person over the age of eighteen who is at the address of the person named in the summons.

3.05 Waiver of Service of Summons

A person other than a child may waive service of summons by written stipulation or voluntary appearance. T.C.A. § 37-1-121(e). (Additional guidelines for waiver of rights by adults are found in T.R.J.P. 30.) The Rules of Juvenile Procedure allow a child to waive service of summons only if the right is knowingly and voluntarily waived, and the child has, prior to the waiver, consulted with a knowledgeable adult with no interest adverse to the child. T.R.J.P. 10(d); 30(d).

3.06 Special Summons Endorsements: Requiring the Child to Be Taken Into Custody and Brought to Court

The court may issue a summons and direct an officer to bring the child before the court if it appears that the child's health or welfare is endangered, or that the child may abscond or be removed from the jurisdiction of the court, or that the child will not be brought before the court. T.C.A. § 37-1-121(d). This procedure allows the child to be brought to court for an immediate pendente lite hearing. It does not authorize a change of custody or shelter care pending that hearing. Such emergency change of custody or placement in shelter care is governed by the emergency removal criteria and procedures discussed in Section 4.0, below.

3.07 Attachment Option When Summons Ineffectual

The court may issue an attachment if a party cannot be served, or if the party served fails to obey the summons, or if the court believes that the summons will be ineffectual. T.C.A. § 37-1-122.

This procedure allows the party attached to be brought to court for an immediate pendente lite hearing. It does not authorize the person to be jailed or held in detention pending that hearing. The contempt process is the proper vehicle for the arrest and detention of a person who willfully fails to comply with a court order or subpoena to appear in court. This process requires notice and an opportunity to be heard.

Special procedural requirements must be met to support the issuance of an attachment of a child. Such attachments are to issue only “for extraordinary matters.” If a child fails to appear at a hearing or conference to which the child has been properly summoned or personally notified to appear, the judge or referee may issue an order of attachment. T.R.J.P. 11(a). In other circumstances there must be probable cause to believe the child to be dependent and in need of the immediate protection of the court. The probable cause determination must be supported by a statement of the person requesting the attachment, reduced to writing and made under oath, and must provide sufficient information to support an independent judgment of probable cause for the issuance of the attachment. T.R.J.P. 11(b).

Like the issuance of the special summons discussed in Section 3.06, this procedure allows the child to be brought to court for an immediate pendente lite hearing. It does not authorize a change of custody or shelter care pending that hearing. Such emergency change of custody or placement in shelter care is governed by the emergency removal criteria and procedures discussed in Section 4.0, below.

3.08 Service by Publication: Diligent Search Requirement; Provisional Hearing Option; Interlocutory Orders

When a necessary party cannot be located and service of process must be made by publication, the court may proceed to a provisional hearing on the petition with respect to all other parties on whom service of process has been obtained. Under these conditions, the court is not required to wait for service of process by publication to be completed, and may enter an interlocutory order of disposition. T.C.A. § 37-1-125.

The provisional hearing must in all respects comply with the notice and hearing requirements of a final hearing on the petition (as discussed in Sections 9.0 and 10.0, below) and the child “must be personally before the court.” The interlocutory order is binding on the parties served, but does not affect the rights and duties of the party who is served by publication. The findings of fact and interlocutory orders become final without further evidence if the party served by publication fails to appear for the final hearing on the petition. However, if the party does appear at the final hearing, the interlocutory findings and orders shall be vacated and disregarded and the final hearing conducted without regard to the interlocutory proceeding. T.C.A. § 37-1-125.

4.0 EMERGENCY REMOVAL

In general, due process requires that a parent be given notice and an opportunity to be heard before the state can interfere with a parent's custodial rights to his or her child. However, under some circumstances a child may be removed from the custody of the parent without notice or hearing.

4.01 Conditions Justifying Emergency Removal

An "emergency removal" is permissible if there is probable cause to believe that:

- The child is neglected, dependent or abused; AND
- The child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm; OR
- The child may abscond or be removed from the jurisdiction of the court; AND
- There is no less drastic alternative to removal of the child from the custody of the child's parent, guardian or legal custodian available, which would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending final hearing.

T.C.A. § 37-1-114(a)(2).

The Department of Children's Services must make reasonable efforts to prevent the removal of a child from the home, if this can be done safely. T.C.A. § 37-1-166. The requirement of the state to make reasonable efforts is discussed in Section 5, below.

Conditions for emergency removal include a situation in which a parent leaves a child with a neighbor and fails to return to pick up the child, and no one is willing and able to continue to care for the child. In a situation like this, the Rules of Juvenile Procedure allow DCS staff to remain in the child's home until a relative, parent or legal guardian agrees to take responsibility for the child. T.R.J.P. 5(d)(5).

4.02 Persons Authorized to Make Emergency Removal

A law enforcement officer, DCS social worker or duly authorized officer of the court may remove a child prior to the filing of a petition and without a court order, if the person has reasonable grounds to believe that the emergency requirements discussed above exist. T.C.A. § 37-1-113(a)(3); T.R.J.P. 5(d)(2).

Physicians and hospital administrators may retain a child in the hospital until "the next regular session of the juvenile court," if the doctor or administrator believes that the child would be in imminent danger of harm upon release from the hospital. T.C.A. § 37-1-404.

A removal can also be made pursuant to a court order obtained by filing a petition and asserting in the petition facts that would support an ex parte issuance of an emergency removal order by the court. T.C.A. §§ 37-1-113(a)(3), 37-1-114(b)(2); 37-1-122(d)(1); T.R.J.P. 5(d)(1). The ex parte order must include a judicial finding and supporting facts that it is contrary to the welfare of the child to remain in the home. 45 CFR 1356.21(c). If the child is taken into custody prior to filing a petition, the petition must be filed no later than two days after the child is removed, excluding non-judicial days. T.R.J.P. 5(d)(4).

4.03 Notice Requirements Following Emergency Removal: Petition Requirement; Setting of Preliminary Hearing

The person taking a child into custody in an emergency removal is required to give notice to the parent, guardian or other legal custodian of the fact that the child has been taken into custody and of the reasons for taking the child into custody. If the emergency removal is accomplished in advance of the filing of a petition, a petition must be filed “as soon as possible” but in no event later than two judicial days after the child is taken into custody. T.C.A. §§ 37-1-115(a)(2); 37-1-128(b)(2); T.R.J.P. 5(d)(4).

The court is obligated to ensure that notice is given to parents, guardians, or other legal custodians, and to the child, if the child is fourteen years or older. This must include notice of their right to a preliminary hearing, the time date and place of the hearing, and the factual circumstances necessitating the removal. T.R.J.P. 5(d)(3).

5.0 REASONABLE EFFORTS INQUIRY; REASONABLE EFFORTS REQUIREMENT; EXCEPTIONS TO REASONABLE EFFORTS REQUIREMENT

5.01 Reasonable Efforts Defined

In order to achieve permanency for the child, the state is required to make reasonable efforts, if it can be done safely, to:

- Prevent the need for removal of the child from the child's family (family preservation);
- Enable a child in custody to return home (reunification); or
- Reach another permanency goal for the child, as identified in the permanency plan.

Under Tennessee law, "reasonable efforts" is defined as "the exercise of reasonable care and diligence by the Department to provide services related to meeting the needs of the child and the family." T.C.A. § 37-1-166(g). Reasonable efforts are aimed at helping children achieve permanency. They are provided to children and parents or guardians in an attempt to achieve the permanency goal identified for the child.

Reasonable efforts are a crucial component of foster care because these efforts represent the responsibilities of the state and agencies to effectuate permanency. Each child's permanency plan must clearly articulate the services (efforts) to be provided. In the case of biological parents whose children have been removed, reasonable efforts provide a second chance at learning parenting skills that will enable them to keep their children safe and to nurture their children's healthy development.

The obligation to provide reasonable efforts was first imposed by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 USC § 670, et seq. The Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89, clarified the reasonable efforts requirements of the earlier law, and specifically exempts certain types of cases from the reasonable efforts requirements. (See Section 5.03, below.) ASFA emphasizes that the child's health and safety shall be the paramount concern of all efforts made toward permanency.

5.02 Reasonable Efforts Requirement

At every hearing where the child is placed or remains in custody, the court must make a finding of reasonable efforts. This finding should address what efforts (or services) were provided by the Department to prevent removal of the child, to reunify the family, or to achieve another permanency goal for the child. T.C.A. § 37-1-166(a) and (g).

The Department bears the burden of showing that it made reasonable efforts by providing services that were reasonable in duration, scope, and intended effect, given the family's and child's circumstances. The Department must provide an Affidavit of Reasonable Efforts, answering the following questions:

- Is removal necessary in order to protect the child, and if so, what is the specific risk or risks to the child or family that necessitates removal of the child?
- What specific services are necessary to allow the child to remain in the home or to be returned to the home?
- What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?
- Has the Department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services were not provided?

T.C.A. § 37-1-166(b) and (c). The juvenile court reviews the Affidavit of Reasonable Efforts, but must also make an independent determination based on evidence presented in court. In making a reasonable efforts determination, the court must find, based on all the facts and circumstances, whether:

- There is no less drastic alternative to removal;
- Reasonable efforts have been made to prevent the need for removal or make it possible for the child to return home; and
- Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

T.C.A. § 37-1-166(d). If, after hearing the proof and reviewing the Affidavit of Reasonable Efforts, a court is not satisfied with the efforts made by the Department, the court may make a finding that the Department did not provide reasonable efforts. The consequences of negative findings are discussed in Section 5.05, below.

5.03 Exceptions To Reasonable Efforts Requirements

Reasonable efforts to preserve or reunify the child with the family are not required if a court of competent jurisdiction has determined that:

- (1) The parent has subjected the child, a sibling, half-sibling, or other child in the household to "aggravated circumstances" defined in Tennessee as: abandonment, abandonment of an infant (child under the age of one year), aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse as defined in T.C.A. § 37-1-102; or
- (2) The parent has committed murder or voluntary manslaughter of any sibling, half-sibling or other child residing temporarily or permanently in the home, or the parent has aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or
- (3) The parent has committed a felony assault that results in serious bodily injury to the child or to any sibling, half-sibling or other child residing temporarily or permanently in the home; or
- (4) The parental rights of the parent to a sibling or half-sibling have been terminated involuntarily;

AND that family preservation or reunification is not in the best interest of the child. T.C.A. § 37-1-166; P.L. 98-1097.

If the juvenile court determines that one or more of these exceptions apply and a decision is made not to provide reasonable efforts to reunify the family, the court must schedule a permanency hearing within 30 days of the date of that determination. T.C.A. § 37-1-166(g)(5). See Section 13.0, below.

5.04 Reasonable Efforts in the Context of the Permanency Process

Reasonable efforts inquiries ordinarily focus on efforts to preserve or reunify the family. However, as indicated above, reunification is not an appropriate goal in all cases. The court, as part of its review process, is required to make findings as to whether the Department is making reasonable efforts toward

achieving the goal identified in the permanency plan in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child. T.C.A. § 37-1-166(g). See Section 12.08, below.

5.05 Legal Consequences of Failure to Make Reasonable Efforts

Tennessee receives substantial federal assistance conditioned on its compliance with the requirements of the federal adoption assistance and child welfare legislation. Through the Department of Children's Services, the state provides assurances that it will meet all the requirements of federal law, including the provision of reasonable efforts. If courts in individual cases find that those efforts are inadequate, resulting in negative reasonable efforts findings, federal funding can be jeopardized.

With respect to individual dependency proceedings, the failure to make reasonable efforts hinders permanency for children. However, a negative reasonable efforts determination does not provide a parent with a basis to insist that a child be returned to an unsafe household, nor does that failure preclude a finding by the court that a child is dependent and neglected.

See Case Law Section for the Court of Appeals and Supreme Court's treatment of reasonable efforts issues in Tennessee.

6.0 PRELIMINARY HEARING FOLLOWING EMERGENCY REMOVAL

The purpose of the preliminary hearing is for the court to determine whether the Department, through the introduction of proof, has established that the emergency removal of the child was justified. The court must find probable cause that:

- The child is neglected, dependent or abused; AND
- The child is subject to an immediate threat to the child's health or safety that would likely result in severe or irreparable harm; OR
- The child may abscond or be removed from the jurisdiction of the court; AND
- There is no less drastic alternative to removal of the child from the custody of the child's parent, guardian or legal custodian available which would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing.

6.01 Time Limit for Preliminary Hearing

A preliminary hearing must be held no later than three judicial days, and in no event later than 84 hours after the child's removal. The court must determine whether there is probable cause to believe that the conditions for the emergency removal exist. T.C.A. § 37-1-117(c); T.R.J.P. 6(c).

6.02 Notice of Preliminary Hearing

The court is required to make every effort to notify the parent, guardian or legal custodian of the date, time and place of the preliminary hearing and the factual circumstances necessitating the removal. A child of fourteen years or older is also entitled to such notice. T.C.A. § 37-1-117(c), 37-1-121; T.R.J.P. 5(d)(3).

6.03 Waiver of Preliminary Hearing; Revocation of Waiver

A parent, guardian or legal custodian can waive the right to a preliminary hearing or the time limits associated with the scheduling of the hearing by making an express and knowing waiver. That waiver may be revoked at any time. If the waiver is revoked, a preliminary hearing must then be rescheduled within three judicial days of the date of revocation of the waiver. T.R.J.P. 6(c), 16(b); T.C.A. § 37-1-117(c).

6.04 Conduct of the Preliminary Hearing

The parents, guardian or other legal custodian, and a child fourteen years or older, have a right to be heard at the preliminary hearing, to cross-examine witnesses, and to present evidence of their own. T.C.A. §§ 37-1-127(a) and 37-1-121. Reliable hearsay is admissible at a preliminary hearing. T.R.J.P. 16(a).

6.05 Required Findings and Orders at Preliminary Hearing

The standard of proof at the preliminary hearing is "reasonable grounds to believe," or "probable cause." If the emergency removal conditions exist, the court may order the child to be placed in the custody of a

suitable person or agency. If the court determines the conditions are not met, the child must be returned to the custody of the person from whom the child was removed. The court may enter an interim or preliminary order setting forth conditions of the return – including, for example, services to be provided, actions to be taken, appropriate restraining orders – designed to protect the rights and interests of the child and the parties pending further hearing. T.R.J.P. 16(c).

The court must inquire into and make specific findings regarding whether the Department has complied with reasonable efforts to prevent the removal of the child and the extent of reasonable efforts provided towards reunification. T.C.A. § 37-1-166. See discussion in Section 5.0, above. The court must also either set child support as part of the preliminary hearing or set a date for child support hearing within 45 days of the date of the child's placement in state custody. T.C.A. § 37-1-151(a)(2).

6.06 Permanency Plan Requirements if Child Remains in DCS Custody

A permanency plan must be promptly developed, submitted to the court, and approved or ratified for all children who remain in custody and their families. (See the full discussion of the rights of parties and obligations of the court and the Department of Children's Services in this regard in Section 12, below).

7.0 DISCOVERY IN DEPENDENCY PROCEEDINGS

Parties in dependency proceedings are entitled to access to information available to parties in a civil proceeding in circuit court under the Tennessee Rules of Civil Procedure. The precise mechanisms for accomplishing discovery are to be addressed by local rule in each juvenile court. T.R.J.P. 25. An example of a local discovery rule is provided in the appendix to this Guide. If the court does not have a local discovery rule, a petition for rulemaking can be filed with a suggested rule attached for the court's consideration.

8.0 ASSESSMENT, EVALUATION, AND TREATMENT OF A CHILD PENDING HEARING

8.01 Department of Children's Services Assessment

The juvenile court has the authority to order the Department of Children's Services to make an assessment of the child and report the findings and recommendations to the court at any time prior to the disposition of a dependency proceeding. Such an order of referral confers authority to the Department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent, legal custodian or guardian of the child. T.C.A. § 37-1-128(c)(1).

The Department must obtain consent from the parent, guardian or legal custodian for treatment for either the mental or physical well being of the child. If consent cannot be obtained, the Department may apply to court for authorization to provide consent on behalf of the child. T.C.A. § 37-1-128(c)(2).

The Department's must report its recommendations within 15 days. The court has the authority to extend the time limit up to thirty days.

The report must include a review of:

- The child's previous records, including, but not limited to, health records and educational records;
- The child's family history;
- The child's current family status;
- A written recommendation concerning the child's status.

T.C.A. § 37-1-128(c)(3).

8.02 Court Ordered Medical Examination and Treatment

The court may order the child examined at a suitable place by a physician regarding the child's medical condition during the pendency of any proceeding. The court may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment. Under these circumstances, treatment may commence even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment. T.C.A. § 37-1-128(d).

8.03 Court Ordered Evaluation for Mental Illness or Mental Retardation

The court may also order an assessment of the child to determine if the child suffers from mental illness or mental retardation. The child may be evaluated on an outpatient basis by a community mental health center, mental health institute, or licensed private practitioner. If there is reason to believe the child may be suffering from mental retardation, the court may order an outpatient evaluation of the child. This evaluation can be performed by the community mental health center, developmental center or licensed private practitioner designated by the Commissioner of the Department of Mental Health and Developmental Disabilities to serve the court. T.C.A. § 37-1-128(e)(1). (If a community mental health center receives grants or contracts from DMHDD and the commissioner has not designated another provider for outpatient evaluation for the court, DMHDD must contract with the center for evaluation services and the center must provide such services to courts within the catchment area. T.C.A. § 37-1-

128(e)(5).)

If the professional attempting to perform the evaluation determines that the evaluation cannot be performed properly on an outpatient basis, the court may order the child placed in a hospital or treatment resource (defined in T.C.A. § 33-1-101) for evaluation and for treatment necessary to the evaluation. Inpatient hospitalization or treatment under these conditions may not last for more than thirty days. T.C.A. § 37-1-128(e)(1).

The court may order the child placed in a hospital or treatment resource for evaluation and treatment necessary to the evaluation, for not more than thirty days. The court must first determine that the child is mentally ill and poses an immediate substantial likelihood of serious harm, (defined in Title 33 Chapter 6 Part 5) because of the mental illness. If a child is placed in a state-supported facility, the child shall be in the custody of the commissioner of DMHDD. T.C.A. § 37-1-128(e)(1)(A), (B).

The court-ordered evaluator must file a complete report with the court. The report must include:

- Whether the child is mentally ill or mentally retarded;
- Identification of the care, training or treatment required to address conditions of mental illness or mental retardation which are found;
- Recommendation of resources which may be able to provide such services;
- Whether the child is subject to voluntary or involuntary admission or commitment under the mental health/mental retardation admission/commitment statutes (Title 33);
- Any other relevant information that is within the competence of the evaluator.

T.C.A. § 37-1-128(e)(2). The court may initiate appropriate mental health or mental retardation commitment proceedings or take other appropriate action under other provisions of the Juvenile Court Act or Title 33, if the court finds that the child needs care, training or treatment for mental illness or mental retardation. T.C.A. § 37-1-128(e)(3).

8.04 Pre-dispositional Evaluation and Assessment with Child in Custody of DCS

After adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the Department for the purpose of evaluation and assessment if the Department has a suitable placement available for such purpose. If the department determines there is no suitable placement available, the court may not the Department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of 30 days and the court shall have a hearing to determine the appropriate disposition before the expiration of the 30 days.

8.05 Pre-dispositional Report/Social History

The court can order a pre-dispositional report to include an investigation and evaluation of the habits, surroundings, conditions and tendencies of the child. The court can designate the person to conduct the investigation and evaluation and to make the report. T.R.J.P. 33. The report cannot be considered by the judge prior to a determination that the allegations in the petition have been established, and the court has adjudicated the child to be dependent and neglected.

8.06 Evidentiary Issues Regarding Court Ordered Assessments and Evaluations

Court ordered evaluations are not automatically admissible in a proceeding before the court. The reports, evaluations, and assessments cannot be considered by the court unless introduced in accordance with the applicable rules of evidence. See discussion at Section 10.01, below.

9.0 THE ADJUDICATORY HEARING

The adjudicatory hearing is a bench trial in which the court determines whether the factual allegations of the petition have been established by clear and convincing evidence and whether the evidence supports a finding that the child is dependent. (There is no provision for a jury trial in a dependency proceeding in juvenile court. T.C.A. § 37-1-124(a).) The statute contemplates a bifurcated hearing process: an adjudicatory hearing, followed by a dispositional hearing. A party has a right to insist upon this bifurcation. In practice parties often seek to introduce dispositional evidence during the adjudicatory hearing. T.R.J.P. 32(a). It is important to recognize that certain evidence (i.e., reliable hearsay) that may be admissible in the dispositional hearing may not be admissible at the adjudication.

9.01 Time Limits for Scheduling Adjudicatory Hearings

An adjudicatory hearing must be scheduled within 30 days of the date the child was taken into custody, if the child is in custody pursuant to an emergency removal. The hearing must be held within 30 days of the filing of the petition if “reasonable and possible,” but in no event later than 90 days after the date the petition was filed. T.R.J.P. 17(a). Continuances may be granted for good cause or by agreement of the parties, subject to court approval.

9.02 Conduct of Adjudicatory Hearing

Despite general language in the code that hearings be conducted “in an informal but orderly manner,” T.C.A. § 37-1-124(a), dependency proceedings in juvenile court are to be conducted “in accordance with the highest standards of courtroom conduct and deportment which shall be prescribed in writing by local rules.” T.R.J.P. 27(a).

Dependency proceedings are explicitly exempted from the general requirements that proceedings “shall be open to all persons who are properly concerned.” T.R.J.P. 27(a). The juvenile court has the discretion under both statute and rule to exclude the public from dependency proceedings, T.R.J.P. 27; T.C.A. § 37-1-124(d), with the exception of contempt proceedings. T.C.A. § 37-1-124(d). Further, the court may temporarily exclude the child from any juvenile court hearing except “while allegations of the child’s delinquency or unruly conduct are being heard.” *Id.*

The court has authority to request the district attorney, city or county attorney, or any attorney to present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the state. If requested, the statute says the attorney “shall present the evidence.” T.C.A. § 37-1-124(b).

9.03 Beginning the Adjudicatory Hearing

At the beginning of the adjudicatory hearing, the Court is required to:

- Ascertain whether the parties before the court are represented by counsel;
- Explain to any party who is not represented the right to be represented by counsel, including their right to be represented by appointed counsel if indigent;
- Verify the name, age and residence of the child;
- Ascertain the relationship of the parties to the child and to each other;
- Ascertain whether all necessary parties are present;

- Ascertain whether notice requirements have been complied with, and if not, whether the affected parties knowingly and voluntarily waive compliance;
- Explain to the parties their rights, including the right to confront and cross-examine witnesses, and the right to subpoena and present evidence on their own behalf;
- Explain the purposes of the hearing and the possible consequences.

T.R.J.P. 28(b)(1). Much of this information should be provided in advance of the hearing, either at a pretrial conference or other pretrial proceeding. However, the judge or referee is required to perform this function and cannot delegate it to a court clerk or other non-judicial officer.

9.04 Hearsay Exceptions

In arriving at its decision, the court must consider only evidence that has been formally admitted. The Tennessee Rules of Evidence apply to all adjudicatory hearings. T.R.J.P. 28(c).

Advocates should be able to respond effectively to evidentiary issues that commonly arise in juvenile dependency proceedings, especially those relating to hearsay. Hearsay exceptions that often arise in juvenile court include:

- Statements of children;
- Records of regularly conducted activity; and
- Expert testimony.

9.04 (a) Statements of Children

A child's out of court statement is admissible if the statement:

- Is made by a child alleged to be the victim of physical, sexual, or psychological abuse or neglect,
- Is about abuse or neglect, and
- Is offered in a civil action concerning issues of dependency or issues concerning termination of parental rights.

T.R.E. 803(25).

A child of any age may be called as a witness by any party and is subject to cross-examination. A child is presumed to be a competent witness unless this presumption is rebutted. T.R.E. 601.

If the court determines that the circumstances surrounding the declaration indicate a lack of trustworthiness, the statement is inadmissible. T.R.E. 803(25). See *Miller v. Tennessee Bd. Of Paroles*, No. 01A01-9806-CH-00293, 1999 WL 43263, *6-8 (Tenn. Ct. App. Feb. 1, 1999). Juvenile court practitioners are encouraged to refer to this case and its footnotes concerning the issue of the reliability of children's statements.

Children thirteen years or older at the time of the hearing must testify unless unavailable as defined in T.R.E. 804(a). T.R.E. 803(25).

A statement by a child that does not allege abuse and neglect may be admissible under a different exception to the hearsay rule or as non-hearsay, i.e., "excited utterance" or "then existing mental, emotional, or physical condition."

The trial court has discretion to fashion a more comfortable environment for the child to testify in order to minimize any harmful effects to the child. Due process requires that, at a minimum, the parties' attorneys be present and the proceeding be recorded. (See *Department of Human Servs. v. Norton*, 928 S.W.2d 445 (Tenn. Ct. App. 1996). Permission to appeal denied. *Rutherford v. Rutherford*, 971 S.W. 2d 955 (Tenn. Ct. App. 1997).)

9.04 (b) Records of Regularly Conducted Activity

With respect to the "Business Record" exception found in T.R.E. 803(6), advocates should examine the following questions:

- Is the record made by or from information transmitted by a person with knowledge and a business duty to record or transmit the record?
- Is the record kept in the course of a regularly conducted business activity?
- Is the record made at or near the time of the event?
- Is it the regular practice of that business activity to make the record?

A business record must be introduced through the record's custodian or other qualified witness. Only the exact words of the record, not a verbal summary, are admissible. The record is inadmissible if the source of information or circumstances of preparation indicate a lack of trustworthiness. Records prepared for purposes of the litigation are generally inadmissible.

9.04 (c) Expert Testimony

Tennessee Rule of Evidence 702 allows opinion testimony by persons "qualified" by the court as an expert. Experts are qualified based upon their scientific, technical, or specialized knowledge of a particular subject matter. Through voir dire, advocates should probe the qualifications of a proffered expert and should determine whether the qualifications being offered are relevant to the issues in the case. For example, a psychiatrist may or may not be qualified to testify about the effects of child sexual abuse.

Expert testimony often relies on underlying facts or data that "may be made known to the expert at or before the hearing." T.R.E. 703. This raises two issues for the advocate. First, an expert may gather data at the hearing by observing the parties and may testify on those observations. Second, the expert is required to disclose underlying facts or data, and that data must be trustworthy. If the facts or data indicate a lack of trustworthiness, the testimony may be disallowed. Advocates should always test the trustworthiness of an expert's underlying facts or data.

Scientific or technical evidence will not be admissible unless it is determined to be reliable. The reliability of scientific evidence is determined by considering the following nonexclusive list of factors:

- Whether the scientific evidence has been tested and the methodology with which it has been tested;
- Whether the evidence has been subjected to peer review or publication;
- Whether a potential rate of error is known;
- Whether the evidence is generally accepted in the scientific community; and
- Whether the expert's research in the field has been conducted independent of litigation.

State v. Begley, 956 S.W.2d 471, 475 (Tenn. 1997).

The roles and training required of persons associated with child welfare, such as DCS social counselors, CASAs and therapists, do not automatically qualify those persons as expert witnesses entitled to give

expert opinions. Their testimony as lay witnesses, in the form of opinions or inferences, is “limited to those opinions and inferences which are (1) rationally based on the perception of the witness, and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” T.R.E. 701. The judge will usually be able to draw the same conclusions without qualifying these witnesses as experts.

9.05 Standard of Proof at the Adjudicatory Hearing

The burden of proof in adjudicatory hearings in dependency cases is “proof by clear and convincing evidence.” T.R.J.P. 28(f); T.C.A. § 37-1-129(c).

9.06 Required Findings of Fact

A court must enter an order of dismissal if it is not satisfied that the evidence of dependency and neglect is clear and convincing. The court cannot find evidence insufficient to support a dependency finding and still order DCS to monitor the child and family. *In re Chandler, DHS v. Nix*, 4 TAM 9-7 (Tenn. Ct. App., W.S., February 1, 1979).

When the court finds that the evidence of dependency is clear and convincing, it must enter an order adjudicating the child dependent and neglected. The court must “include in its adjudicatory order, or in a separate document (e.g. a memorandum opinion) findings of fact upon which it relies for the adjudication embodied in the order.” T.R.J.P. 28(f)(2). The court must also determine who committed severe child abuse as defined in T.C.A. § 37-1-102(b)(21), if applicable. The court must make a specific finding of fact identifying the perpetrator and the “basis of its conclusions.” T.C.A. § 37-1-129(a)(2).

The court must also make reasonable efforts inquiries and make findings as required by T.C.A. § 37-1-166. See discussion in Section 5, above. Failure to make clear findings of fact can create issues on appeal. See discussion in Section 21.04, below.

Findings of fact must be made within 30 days of the close of the hearing, or if an appeal or petition for certiorari is taken, within five days thereafter, excluding Sundays. T.R.J.P. 28(f).

Findings of fact at the adjudicatory hearing can be used at subsequent proceedings. For example, if in a subsequent termination of parental rights proceeding the petitioner seeks to prove “persistence of conditions that led to the removal,” it is important that the order entered at the time of removal specify what those conditions were. Parties should consider submitting proposed findings of fact. If the judge has not made written findings of fact within the time allowed by law, the attorney should file a motion requesting that findings of fact be made.

9.07 Setting the Case for Dispositional Hearing; Time Limits; Predispositional Orders

If there is an adjudication of dependency and neglect, the court shall either proceed to conduct a dispositional hearing immediately following the conclusion of the adjudicatory hearing or set the case for a dispositional hearing. T.C.A. § 37-1-129(c); T.R.J.P. 28(f)(1)(ii) and 32(a).

The dispositional hearing is scheduled within 15 days of the adjudicatory hearing if the child is in custody; otherwise within 90 days. T.R.J.P. 18(a). Extensions of time may be granted at the request of or

with the consent of the child or for by order of the court upon good cause shown. T.R.J.P. 18(b).

9.08 Interim Orders; Child Support

The court may provide an interim disposition pending the dispositional hearing. T.R.J.P. 32(b). The court may also order assessments and evaluations as discussed in Section 8, above.

The court must also address the issue of child support for any child who remains in or is committed to state custody pending a dispositional hearing. T.C.A. § 37-1-151(b).

10.0 THE DISPOSITIONAL HEARING

The purpose of the dispositional hearing is to “design an appropriate plan to meet the needs of the child and to achieve the objectives of the state in exercising jurisdiction.” T.R.J.P. 32.

10.01 Evidence Admissible at the Dispositional Hearing

In arriving at its dispositional decision, the court may consider evidence from only two sources: evidence that has been formally admitted and the child’s juvenile court record. T.R.J.P. 32(f).

The rules of evidence apply, except that “reliable hearsay, including, but not limited to, certified copies of convictions or documents such as psychiatric or psychological evaluations of the child or the child’s parents or custodian or reports prepared by the Department of Children’s Services may be admitted.” T.R.J.P. 32(f). All evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though it may not have been admissible at the adjudicatory hearing. T.C.A. § 37-1-129(d).

If “reliable hearsay” is admitted, the party against whom that evidence is admitted must be given “a fair opportunity to rebut” such evidence. T.R.J.P. 32(f). The parties or their counsel must be afforded an opportunity to examine and controvert written reports received and to cross-examine individuals making the reports. T.C.A. § 37-1-129(d).

The Rules of Juvenile Procedure contain a special rule when sensitive information is part of reports or when sensitive information is relied upon for those reports. The court, upon finding that inspection by the parties would be detrimental to the child, may restrict access to the information to attorneys for the parties. The court may appoint counsel for an unrepresented party if necessary to comply with this exception. T.R.J.P. 33(e). This rule is of questionable constitutional validity, unless the parties waive their right to inspect the information, other than through their attorney. As the Court of Appeals has observed, this issue is not one of minor legal technicality:

For a court to issue an order based in whole or in part on a report kept secret from the parties is repugnant to our democratic system of government. The Constitution of Tennessee guarantees that the courts shall be open to all persons and that they shall have a remedy “by due course of law.” Art. 1, Section 17. This is a hollow guarantee if issues may be decided by the court on “evidence” known only to the court. *Greenfield v. Ferguson*, 1985 Tenn. App. LEXIS 2991, at *4, (Tenn. Ct. App. M.S. July 11, 1985).

The Juvenile Court Act includes a provision that “sources of confidential information need not be disclosed.” T.C.A. § 37-1-129(d). A similar reference is made in the Rules of Juvenile Procedure to “information protected from disclosure by law.” T.R.J.P. 33. These provisions protect the identity of persons who report abuse or neglect pursuant to T.C.A. § 37-1-409(a)(2). However, the court, in its discretion, may determine that disclosure of confidential information, including the identity of the reporter, is material to the hearing. T.C.A. § 37-1-409(a)(1).

10.02 Dispositional Options

If the court did not remove children from the home or if the children were returned to the home after the preliminary hearing, the court may use appropriate community resources for care, supervision, and

treatment of the child, appropriate to the needs of the child. T.R.J.P. 32; T.C.A. § 37-1-101(a)(3).

At the conclusion of the dispositional hearing, the court may make any of the following orders of disposition “best suited to the protection and physical, mental and moral welfare of the child:”

- (1) Allow the child to remain with the child’s parents, guardian, or other custodian, subject to conditions established by the court; or
- (2) Transfer legal custody to:
 - (a) Any individual who, after a home study, is found by the court to be qualified to receive and care for the child;
 - (b) Department of Children’s Services;
 - (c) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;
 - (d) An individual in another state with or without supervision by an appropriate officer under T.C.A. § 37-1-142;
 - (e) A county department of children’s services; or
 - (f) Transfer custody to the juvenile court of another state under T.C.A. § 37-1-141 if the child is or is about to become a resident of that state.

T.C.A. § 37-1-130(a)(1)-(4). Dispositional orders must be in writing and signed by the judge. T.R.J.P. 32(j).

10.03 Reasonable Efforts Findings at the Dispositional Hearing; Provisions for Child Support for Child in State Custody

The court must make a reasonable efforts inquiry and appropriate findings if the child remains in or is placed in state custody, as discussed in Section 5.0, above.

The court must also address the issue of child support. T.C.A. § 37-1-151. Ideally, child support is addressed as early as possible in the proceedings. However, the court has the option to schedule a separate child support hearing within 45 days of the date the child is placed in state custody. T.C.A. § 37-1-151(a)(2).

The Child Support Guidelines establish child support for any child placed in state custody. Procedures for setting child support in a separate child support proceeding are set forth in T.C.A. § 37-1-151.

Strict application of the Child Support Guidelines may be inappropriate in cases where children are removed from indigent parents. The judge shall make written findings as to why a deviation from the Guidelines is appropriate. T.C.A. § 36-5-101.

10.04 Special Procedures for Return of Custody Where Brutality or Abuse Found

Children who have been found to be abused pursuant to T.C.A. § 37-1-102(b)(12)(G) may not be returned to the custody of the perpetrator or to the non-offending perpetrator who failed to protect the child until the court has considered specific reports and recommendations. The court must consider:

- Reports from the commissioner of children's services or his designee having a master's degree in social work or equivalent training and experience, as the commissioner deems appropriate;
- Reports from a psychiatrist, or in the alternative, a physician and a psychologist, based on professionally appropriate examinations of the child and of the person who engaged in or failed to protect the child from the brutality or abuse; or
- Reports from a multidisciplinary protective services team from DCS based on professionally appropriate examinations of the child and of the person who engaged in or failed to protect the child from the brutality or abuse.

T.C.A. § 37-1-130(c). The reports and recommendations must be filed within 30 days after the court orders the local director of the county office of the Department to obtain the reports. The Department may intervene as a matter of right in any such proceeding. T.C.A. § 37-1-130.

A child who has suffered either sexual abuse or aggravated child abuse shall not be placed back in the care of the abusive party unless the judge finds, by clear and convincing evidence, that a threat to the child's safety no longer exists. T.C.A. § 37-1-167.

10.05 Authority of Department of Children's Services Over Placement of Children in Custody; Procedures For Return of Child to Home By Department

Any order which places custody of a child with the Department of Children's Services empowers the Department to select any specific residential or treatment placement or programs for the child according to the determination made by the Department, its employees, agents or contractors. T.C.A. § 37-1-129(e)(1). Effective July 1, 2004, the court may review the residential or treatment placement of a child placed in the Department's custody pursuant to T.C.A. § 37-1-129(e)(2).

Editors Note: T.C.A. § 37-1-129(e), as amended, does not appear to allow the court to actually order a specific placement. However, pursuant to the federal regulation, 45 CFR 1356.21 (g)(3), 65 FR 4020 (1/25/00), it appears the juvenile court does have the authority to order a particular placement if an evidentiary hearing is held and all relevant testimony is allowed, including that of the Department. See also, Debra Ratterman Baker, Et Al., American Bar Association, *Making Sense Of The Asfa Regulations: A Roadmap For Effective Implementation* (Diane Boyd Rauber, Esq., ed., 2001).

A dependent child cannot be committed to or confined in an institution designed or operated for the benefit of delinquent children without a finding that the child is delinquent. T.C.A. § 37-1-130(b).

When the Department determines that a child committed to its custody as a dependent child is ready to return home, the Department must notify the court in writing of its intention to place the child at home on a trial home visit. If the court objects to the trial home visit, it must notify the Department of its objection in writing or set a hearing within fifteen days of the date of the notice, with such hearing to be held at the earliest possible date. If written the court does not provide objection, the Department may place the child on a trial home visit. The notice must include the provision that the Department's legal custody of the child will terminate in 90 days. T.C.A. § 37-1-130(e)(1).

The Department may remove the child during this 90-day period on an emergency or non-emergency basis. A hearing must be held pursuant to T.C.A. § 37-1-130(e)(2).

During the 90-day trial home visit, the court may periodically review the child's status and may make orders consistent with the best interest of the child. T.C.A. § 37-1-130(e)(3).

10.06 Advisement of Right to Appeal

At the dispositional hearing, the court must advise the respondent of his or her right to appeal, (T.R.J.P. 32) and should notify the parties of the time limits and manner for perfecting an appeal. T.R.J.P. 36(d).

11.0 REVIEW OF DECISIONS OF THE REFEREE IN DEPENDENCY PROCEEDINGS²

The juvenile court judge may appoint a member of the bar to serve as a referee and can assign to that referee a case or class of cases to be heard in the first instance. T.C.A. § 37-1-107(a). The referee has the same authority as the juvenile judge in issuing process and in conducting proceedings. T.C.A. § 37-1-107(b).

11.01 Appealable Orders

Any party in a dependency proceeding has a right to a de novo hearing before the juvenile court judge of any decision of the referee, other than decisions on preliminary matters. Any decision of the referee in such cases, including a decision on any preliminary matter, is reviewable by the juvenile court judge “on the court’s own motion.” T.C.A. § 37-1-107(d).

The Juvenile Court Act does not define “preliminary matters.” Some examples of “preliminary matters” are rulings on requests for discovery, motions to suppress evidence, emergency removal and preliminary hearings. T.C.A. § 37-1-107(d).

11.02 Manner of Appeal to Juvenile Judge; Time Limits

Where there is an appeal, the party seeking review of the referee’s decision must file a request for a hearing before the judge within five days, excluding nonjudicial days, of the date of the entry of the order. T.C.A. § 37-1-107(e).

11.03 Effect of Decisions of Referees Pending Appeal; Stays

The findings and recommendations of the referee constitute the decree of the court pending any rehearing unless the judge orders otherwise. Either the referee or the judge can issue a stay of the order pending rehearing, either on his or her own motion or pursuant to a motion filed by any party. T.C.A. § 37-1-107(c).

11.04 Appeal from the Referee to Circuit Court

An appeal from a final order of the referee may be filed in the circuit court pursuant to T.C.A. § 37-1-159. T.C.A. § 37-1-107(f). See discussion at Section 15.0, below.

²This section was adapted from Kozlowski and Shookhoff, “Juvenile Appeals” in *Appellate Practice in Tennessee* (Tennessee Bar Association, 1991, Second Edition).

12.0 THE PERMANENCY PROCESS

The legislative purpose of the permanency process is to

- protect children from unnecessary separation from parents who can provide safe homes;
- protect them from prolonged placement in foster care and the uncertainty it provides; and
- assure that, if an early return to the care of their parents is not possible, they will be placed in a permanent home at an early date.

T.C.A. § 37-2-401(a).

This process is intended to provide a mechanism to monitor children in foster care to ensure that “everything reasonably possible is being done to achieve a permanent plan for the child.” T.C.A. § 37-2-401(b).

In light of this mandate, the court assumes a critical role in monitoring the child’s progress toward a timely and safe permanent placement. Pursuant to federal and state law, the juvenile court judge is responsible for assuring compliance with the law relating to permanency and for holding the system accountable for making decisions which are in the best interests of the child. See discussion in *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, National Council of Juvenile and Family and Juvenile Court Judges (1995).

It is critical that advocates understand the permanency process, both within the statutory framework and as it pertains to an individual case. The permanency plan embodies that process in an individual case, providing a blueprint for the future of the child and family. Advocates and parties must be involved in its development, so that contents of the plan reflect the tasks and responsibilities of all parties necessary to achieve the goal identified. They should actively participate in the development, modification and monitoring of the permanency plan so that children and families will not be deprived of the services needed for reunification or other permanent placement.

12.01 Development of the Permanency Plan

An individualized permanency plan is created by the Department of Children’s Services or other agency for every child in custody. The contents of the plan are generated at a staffing, which should include input from the child, the parents, the foster parents or relatives with physical custody, advocates for the parents and child, the agency, and any other persons who can provide information about the family. The agency must convene the staffing within 30 days of the date of foster care placement. T.C.A. § 37-2-402(8); 37-2-403(a)(1).

DCS must provide lawyers and parties with adequate notice of the staffing to allow them to prepare and to be present. If a lawyer cannot be present, the client should be advised not to sign the plan until the lawyer has reviewed and made any necessary changes or suggestions.

Sometimes plans contain statements where there might be factual disputes that have not yet been the result of a judicial finding or statements that might be subject to varying interpretations, e.g., the parent “has a substance abuse problem,” “is a drug addict,” “the child tortures animals,” “the child teases animals.” Advocates on all sides of the case should avoid these kinds of statements.

12.02 Contents of the Permanency Plan

Each plan must include a GOAL of one of the following for each child:

- Return to parents (reunification);
- Placement of child with relatives;
- Adoption;
- Planned Permanent Living Arrangement

T.C.A. § 37-2-403(a)(1).

The plan must include a statement of the child's needs and the problems of the parents and the child at the time the child came into state custody. There must be a separate statement of responsibilities for the parents, the agency, the child (if the child was given responsibilities), and anyone else who has a role in achieving the goals of the permanency plan. The statement of responsibilities must be stated in specific terms and be reasonably related to the goal as stated in the plan. The caseworker who is responsible for the day-to-day implementation of the plan must be identified. T.C.A. § 37-2-403(a)(2)(A) and (b)(3).

The permanency plan may provide for concurrent planning, which requires the Department to provide reasonable efforts toward two goals simultaneously. T.C.A. § 37-1-166(g)(6). Depending upon the individual circumstances of the family, the department may provide reunification services while at the same time actively pursue goals of other permanent living arrangements, such as adoption. Concurrent planning allows the family time to comply with the permanency plan and receive the services necessary to reunify the family. In those cases in which the family cannot comply with the plan, concurrent planning helps to ensure a prompt permanent placement for the child.

See examples of permanency plans in the Appendix.

12.03 Requirement of Judicial Approval or Ratification of the Permanency Plan

The juvenile court has jurisdiction over the permanency plan. The judge must ratify the plan within 60 days of the child's placement in care. All parties must have notice of the ratification hearing, including parents, child, foster parents, relatives with physical custody, pre-adoptive parents, DCS caseworker, service providers, advocates for the parents and child and any other interested persons. T.C.A. §§ 37-2-403(a)(2)(A) and 37-2-416. At the ratification hearing, the judge must advise the parents or legal guardians of the law relating to abandonment, the consequences that failure to visit or support the child may result in termination of parental rights, and that the parents or guardians may seek an attorney to represent them. T.C.A. § 37-2-403(a)(2)(B)(i).

If the parties have agreed to the goals and the assignment of responsibilities under the permanency plan, the court may approve the plan as submitted if it finds the plan to be in the best interest of the child. This may take place prior to or at the dispositional hearing. However, if the court is not satisfied with the plan, the court may hold a separate ratification hearing immediately following the disposition and modify the responsibilities, consistent with the findings of fact at the adjudicatory and dispositional hearings. At this hearing, all relevant evidence, including oral and written reports, may be received by the court. T.C.A. § 37-2-403(a)(3).

If the parents dispute the goals and assignment of responsibilities under the plan, the court must hold a hearing in order to resolve the dispute no later than 60 days after the child enters foster care. Again, the

court may receive all relevant evidence, including oral and written reports. The court may modify the responsibilities in order to approve a plan that it finds to be in the best interest of the child. T.C.A. § 37-2-403(a)(3) and (4)(A).

12.04 Miscellaneous Provisions Affecting the Development and Implementation of the Permanency Plan

12.04 (a) Mental Health Counseling.

In all cases involving child abuse and neglect when the child is placed in state custody, the plan must stipulate the abusing or neglecting parent shall receive rehabilitative assistance through mental health counseling if ordered by the court. T.C.A. § 37-2-403(a)(5).

12.04 (b) Planned Permanent Living Arrangement

The plan for a child who remains in foster care for more than a year may be modified to a long-term agreement between a foster parent and the agency charged with the custody and care of the child. In these situations, there must be appropriate arrangements for the child and procedures for the termination of the agreement when it is in the best interest of the child. T.C.A. § 37-2-403(a)(6). The Adoption and Safe Families Act of 1997 states that planned permanent living arrangement shall be allowed only where DCS and the court have documented a compelling reason why all other permanent arrangements would be contrary to the child's best interests.

12.04 (c) Surrender or Termination Action

The agency having guardianship of a child in foster care as a result of a surrender or termination of parental rights shall prepare and submit a plan to the foster care review board or court. The plan shall include the goal for the child of relative placement, adoption or planned permanent living arrangement. Specific reasons must be given for any goal other than placement of the child with a relative or adoption. The plan shall also include a statement of specific responsibilities of the agency and the caseworker designed to achieve the stated goal. T.C.A. § 37-2-403(b).

12.05 Judicial Authority to Monitor the Implementation of the Permanency Plan

Once the plan has been approved or ratified by the court, the judge monitors the parties' progress toward the goal and evaluates their performance in complying with the terms of the plan. T.C.A. §§ 37-2-404(a); 37-2-409(b)(1).

The court's authority to order a specific placement is limited. Any order which places custody of a child with the Department of Children's Services empowers the Department to select any specific residential or treatment placement or program for the child according to the determination made by the Department, its employees, agents or contractors. T.C.A. § 37-1-129(e)(1). Effective July 1, 2004, the court may review the residential or treatment placement of a child placed in the Department's custody pursuant to T.C.A. § 37-1-129(e)(2).

Editors Note: T.C.A. § 37-1-129(e), as amended, does not appear to allow the court to actually order a specific placement. However, pursuant to the federal regulation, 45 CFR 1356.21 (g)(3), 65 FR 4020 (1/25/00), it appears the juvenile court does have the authority to order a particular placement if an

evidentiary hearing is held and all relevant testimony is allowed, including that of the Department. See also, Debra Ratterman Baker, Et Al., American Bar Association, *Making Sense Of The Asfa Regulations: A Roadmap For Effective Implementation* (Diane Boyd Rauber, Esq., ed., 2001).

T.C.A. §§ 37-1-129(e) does not limit the court's role in examining the goal for the child and assuring the responsibilities of the plan and the placement choice further the attainment of the goal. It is the court's duty to assure all parts of the plan are in the best interest of the child, including the appropriateness of a particular placement.

By virtue of its jurisdiction over the permanency plan, the court may convene an evidentiary hearing at any time an issue is raised concerning the plan. The court may hold a hearing to determine that the child's needs are being met in a manner consistent with those identified in the plan. For example, foster home placement may be inappropriate for a child whose needs are identified as in-patient drug treatment or sexual perpetrator treatment.

12.06 Parental Rights Related to the Permanency Plan

As described in Section 12.03, above, the parents must receive notice to appear at the court hearing to ratify the plan. If the parents cannot be located or if they refuse or fail to appear, the agency can still proceed with a termination on grounds of abandonment. The court record or an affidavit must show that the parents were included at the permanency plan staffing. Alternatively, the record must document efforts to notify the parents of the staffing, and that the court advised the parents concerning the law on abandonment and termination. T.C.A. § 37-2-403(a)(2)(B)(ii) (b) and (c).

One of the grounds to terminate parental rights is substantial noncompliance by the parent with the statement of responsibilities of the permanency plan. The failure of the parent to sign or agree to the plan will not prevent the termination on the grounds of substantial non-compliance with the permanency plan if the court finds the parent was informed of the plan's contents, and the requirements of the plan were reasonable and related to remedying the conditions which necessitated foster care. T.C.A. § 37-2-403(a)(2)(C).

12.07 Timetables of Review Hearings and Reports Required

Federal and state law governs timetables for review hearings. In Tennessee, the child's case must be reviewed within 90 days of the date of foster care placement and every six months thereafter. These reviews may be conducted by the court or delegated to the foster care review board. The reviewer must review the permanency plan and make a report on the progress made in achieving the goals contained in the plan. The judge may review the case more frequently. T.C.A. § 37-2-409(d).

The statute contemplates that the court will enter an order outlining progress. If the foster care review board conducts the review, the board is required to make a written report to the judge outlining progress made and setting a time for the goal to be achieved and the date of the next review. T.C.A. §§ 37-2-404(b), 37-2-406.

The custodial agency is required to submit a report for each child in foster care placement and detail the progress made toward reaching the goal set out in the plan. The court and the parties should have an updated plan and a progress report at every review. T.C.A. § 37-2-404(a). (See Appendix for example of agency report.)

12.08 Procedures at Review Hearings

At the review hearings the court or the foster care review board must assess compliance with T.C.A. §§ 37-2-404(b) and 37-1-166. (See Section 5, above for discussion of T.C.A. § 37-1-166 regarding reasonable efforts.) At this review, the court or the board shall:

- (1) Determine the necessity and appropriateness of continued state custody or foster care placement;
- (2) Assess the compliance of all parties with the statement of responsibilities; and
- (3) Determine the extent of progress in addressing the causes necessitating foster care placement and progress toward the goal set out in the plan.

The reviewer must project a likely date on which the goal of the plan will be achieved. T.C.A. § 37-2-404(b). (For further discussion on foster care review boards, see Section 12.10, below.)

Notice of the review must be provided to the parents and their counsel, who have a right to attend and participate in the review, unless there has been a termination of parental rights. T.C.A. § 37-2-404(b). In addition, notice must be provided to foster parents, relatives with physical custody and pre-adoptive parents. T.C.A. § 37-2-416.

Specific questions must be addressed by the board or the court at all review hearings. (The order or report should specify the answers.) Depending on the circumstances, these questions include:

- Is the goal on the permanency plan appropriate or does it need to be modified?
- Is there a need for continued placement in foster care?
- Is the court-approved permanency plan adequate to achieve safe reunification or other permanent goal?
- Is the child in a safe and appropriate placement that adequately meets all physical, emotional and educational needs?
- Are the responsibilities in the permanency plan reasonably related to why the child came into care?
- Is the agency making reasonable efforts to rehabilitate and reunify the family and eliminate the need for placement of the child?
- Do the services set forth in the plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances? If so, how?
- To what extent are the parents in compliance with the permanency plan?
- To what extent is the child in compliance with the permanency plan if the child was given responsibilities?
- Do the terms of visitation with the parents or siblings or others need to be changed?
- Does child support need to be set or modified?
- Do any additional court orders need to be made to move the case toward permanency for the child?
- What time frame should be followed to achieve the goal set in the plan?
- When should the case be reviewed again? By the court or foster care review board?

12.09 Necessary Persons at Review Hearings

The child (if age appropriate), parents, social worker, foster parents or relatives with physical custody, pre-adoptive parents, other service providers (counselor, treatment team, teacher), and the parties' lawyers should attend the review hearings in order to have all relevant information available for the judge or the board. Subpoenas may be issued to guarantee attendance of reluctant witnesses. If the child is placed

outside the county, the child's lawyer needs to request that DCS provide transportation for the child. The review hearings are constitutionally insufficient if only the DCS worker is present.

12.10 The Foster Care Review Board

In order to ensure regular review of the parties' compliance under the permanency plan, the juvenile judge may appoint a panel of citizen volunteers, the foster care review board, to conduct the review hearings 90 days after the child comes into care and every six months thereafter. The judge may choose not to appoint a board and may judicially review these cases at the required intervals. If the judge fails to do either, DCS is delegated the responsibility of appointing a board by statute. T.C.A. § 37-2-406(a)(4).

Parties must be notified of hearings before the foster care review board. The hearings proceed as informal reviews, with relaxed evidentiary standards. The parents, child, foster parents, pre-adoptive parents, relatives with physical custody, DCS case managers, advocates for the parties, and other interested persons have a right to be heard.

The board's role is to advise the court. The board must submit a report to the judge for each child reviewed. The board also must make findings and recommendations regarding the efforts and progress made by the Department to carry out the permanency plan, including a determination of whether the Department is providing reasonable efforts, and any other recommendations regarding the child. The report must include the date of the next review. The board may not ratify the permanency plan or conduct permanency hearings, as these are judicial responsibilities. T.C.A. § 37-2-406.

The board has authority to make a direct referral to the court in two instances:

- (1) Where conditions persist that constitute a deterrent to reaching the permanency goals and such conditions indirectly or chronically compromise the health, safety or welfare of the child. The judge or referee must hear this referral within 30 days.
- (2) Where issues in a particular case constitute a risk of harm and directly compromise the health, safety or welfare of the child. The judge or referee must hear this referral within 10 days.

T.C.A. § 37-2-406(c)(1). (See Forms Section.)

12.11 Rehearing Issues Involving Foster Care Review

Any interested person may file a petition, in writing and under oath, for a rehearing upon all matters coming within the foster care section of the Code, as long as the child is under the jurisdiction of the court. T.C.A. § 37-2-410. The court may modify or set aside any order consistent with the provisions of T.C.A. § 37-1-129(e) and 37-2-403(d). This means not only lawyers for the parties can file petitions, but foster parents, teachers, and relatives may also have access and input with the court. Of course, the child and the parents are parties and may file motions or petitions as desired.

12.12 Methods of Review

There are a variety of approaches for obtaining review of actions taken or orders entered in the course of the foster care review or permanency planning process. A party dissatisfied with the action of the juvenile court in approving, over objection, the terms of a permanency plan probably has no right to appeal de novo to circuit court. Certiorari and supersedeas may be an appropriate means of obtaining review.

Another alternative available to a party in such a case would be to petition to modify the original dispositional order. If the judge denies the petition, de novo appeal of that decision is available. See Section 15.0, below, for discussion of appeal to circuit court.

13.0 THE PERMANENCY HEARING

The permanency hearing is a proceeding at which the judge reaches a final decision concerning the permanent placement for the child. The Adoption and Safe Families Act of 1997 raised the status of the permanency hearing, emphasizing its significance in reaching finality in a dependency case, and underscoring the formality of the hearing, with its attendant needs for due process and zealous advocacy.

The juvenile court judge or referee (not the foster care review board) must hold a permanency hearing within twelve months of the child's placement in foster care. If a court determines, pursuant to T.C.A. § 37-1-166(g)(4), that one or more of the exceptions to providing reasonable efforts to reunify the family exist and a decision is made not to provide reasonable efforts, the court must hold a permanency hearing within 30 days of that determination. At this permanency hearing, if the permanency plan does not contain an alternative goal to reunification, the court should order another permanency plan be drafted by DCS. The court must review reasonable efforts towards the stated goal contained in any plan.

The court uses evidence presented at the permanency hearing to determine the extent of compliance of all parties (parents, other caregivers living in the home, the agency, and the child if the child was assigned responsibilities) with the terms of the plan, and their progress toward the permanency goal for the child. Based on that determination, the court reaches a decision on the child's permanent placement. In the case of a child who is sixteen years of age or older, the court must determine the services needed to assist the child in the transition from foster care to independent living. T.C.A. § 37-2-409. (DCS Policy 16.52 provides that any child who is fourteen to twenty-one years of age shall receive independent living skills.)

13.01 Nature and Purpose of the Permanency Hearing

The permanency hearing is a formal court proceeding, although reliable hearsay may be admissible. The National Council of Juvenile and Family Court Judges recommends that the permanency hearing be allocated 60 minutes on the court's docket in order to allow enough time to hear evidence from all parties. See *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, at 77-86. The reader should note that the *Resource Guidelines* predate the Adoption and Safe Families Act of 1997.

The purpose of the permanency hearing is to reach finality in a dependency case. Under ASFA, the court must decide which of the following six options best addresses the permanent needs of the child:

- (1) Return to the home, and, if so, the date of the return;
- (2) A referral for legal guardianship or other form of permanent custody [Tennessee law prioritizes placement with a relative as a permanency goal];
- (3) Placement for adoption, and if so, the date DCS will file a petition to terminate parental rights;
- (4) Placement in another permanent living arrangement, where DCS has documented for the court a compelling reason for determining that other permanency options are not in the child's best interest;
- (5) If an out-of-state placement, whether that placement continues to be appropriate and in the child's best interest; or
- (6) A transition to independent living, if the child is 16 years or older.

42 U.S.C. 675(5)(C).

13.02 Conduct of the Permanency Hearing**13.02 (a) Notice and Participation**

All procedural protections for the child and family must be in place. Notice must be given to the parents, the child, foster parents, relatives with custody and pre-adoptive parents. The court should consider requiring the child to be present to have the opportunity to state his or her choice of placement. All lawyers involved in the case must be notified and participate in the proceeding. 13.02

(b) Decisions to be Made at the Permanency Hearing

The judge must evaluate the extent to which all parties have progressed toward the goal identified in the permanency plan. The court must go beyond a simple inquiry as to each person's progress and move to a decision-making mode. The court must also make a reasonable efforts finding as required by T.C.A. § 37-1-166. The court should review its prior orders assessing the agency's reasonable efforts toward permanency, in compliance with the statute. See discussion at Section 5.0, above. All evidence that is admissible at a dispositional hearing pursuant to T.C.A. § 37-1-129 shall be allowed. T.C.A. § 37-2-409(b)(2).

Once the court determines what the definitive, long-term decision is for the child's placement, the court sets a definite timetable with the duties of each party clearly outlined. The court may want to approve a plan to transition the child home if efforts toward reunification have been successful.

If the goal has been to reunify and the parents have substantially complied with their responsibilities under the plan, the judge will set a date for reunification at this hearing. If the goal is relative placement, the judge shall set a date for the placement to occur. If concurrent planning has been implemented, the judge will determine the final goal and set the necessary time lines. If the goal is adoption, the judge will set a date for the Department to file the petition to terminate parental rights. 42 U.S.C. 675(5)(C).

If the child cannot be safely returned home, the judge should inquire as to the Department's efforts to locate another permanent placement. The law requires DCS to explore the child's extended family for suitable relative placement. If a willing relative cannot be located, the judge should inquire whether the foster parents or other identified caregivers would be suitable and available to adopt the child. Advocates should be aware that DCS provides adoption subsidy benefits for some children, in compliance with agency regulations.

At the permanency hearing, the court should inquire as to the Department's plan concerning termination of parental rights, in compliance with ASFA. If the Department states that it has documented reasons why termination would not be in the best interest of the child, the court should determine whether those reasons are compelling, thus justifying the exception to terminating parental rights. (See Section 18, below, for a discussion of termination of parental rights under ASFA.)

Planned permanent living arrangement should be considered only when the Department can document compelling reasons why it is not in the child's best interest to pursue other permanency goals. The child's age, behavior, or the unavailability of adoptive homes are not valid reasons for setting the goal of Planned permanent living arrangement.

13.03 Requirement of Dispositional Order after Permanency Hearing

The order issued by the court at the conclusion of the permanency hearing shall include findings of fact based on the proof offered. It is critical that the date for the next review be set before the parties leave the courtroom. Either the judge or the review board must monitor timely compliance with the deadlines set in the order to assure permanency. A date certain for the filing of a new permanency plan, the petition to terminate, and other needed actions should be included in the order.

13.04 Subsequent Hearings

If the child continues in foster care beyond the permanency hearing, the court must conduct subsequent permanency hearings every twelve months until the child is released from custody. T.C.A. § 37-2-409(a). The court may convene a permanency hearing sooner, however. In addition, the court or foster care review board must conduct a review of the plan every six months. T.C.A. § 37-2-404. The statutory availability of these reviews should not diminish the Department's efforts to actively pursue a permanent home for the child. Both the court and the foster care review board may conduct more frequent reviews.

14.0 PETITIONS TO MODIFY OR VACATE ORDERS³**14.01 Grounds for Modifying or Vacating Orders**

An order in a dependency proceeding must be set aside if:

- It was obtained by fraud or mistake sufficient for setting aside a civil judgment;
- The court lacked jurisdiction over a necessary party;
- The court lacked subject matter jurisdiction; or
- Newly discovered evidence so requires.

T.C.A. § 37-1-139(a).

An order in a dependency proceeding, other than a dismissal of a petition on the merits (with prejudice), an order committing a delinquent child to DCS or an institution for delinquent children, and an order terminating parental rights, may also be changed, modified or vacated on the ground that changed circumstances so require in the best interest of the child. T.C.A. § 37-1-139(b).

14.02 Who May File

Any party to the proceeding or any person having supervision or legal custody of or an interest in the child may petition for modification or vacation of an order. T.C.A. § 37-1-139(c); T.R.J.P. 34(d). This includes DCS. (*See Department of Human Services v. Mattox*, No. 89-366-II, 15 TAM 22-10 (Tenn. Ct. App. W.S., April 18, 1990), seeking vacation of an order finding that the children were not sexually abused by their step-grandfather, based on newly discovered evidence--statements made by a child regarding abuse subsequent to the court's finding.)

14.03 Contents of Petition

A petition to modify or vacate must include:

- the court, title and action number of the original proceeding;
- name, age and address of the child;
- name and address of the parent, guardian or legal custodian;
- date and general nature of the order to be modified or vacated;
- a concise statement of the grounds alleged to require modification or vacation of the order, including any change of circumstance or new evidence;
- a concise statement as to the relief requested;
- a statement of the petitioner's relationship or interest in the child if a person other than the child brings the petition.

T.R.J.P. 34(d).

³This section was adapted from Kozlowski and Shookhoff, "Juvenile Appeals" in *Appellate Practice in Tennessee* (Tennessee Bar Association, 1991, Second Edition).

14.04 Time Limits for Hearing on Petition

The petition must be set for hearing within 30 days, T.R.J.P. 34(e)(1), unless the parties agree to the entry of an agreed order of modification, in which case the court can, in its discretion, enter that order without a formal hearing on the petition. T.R.J.P. 34(e)(5).

14.05 Notice to Parties

The clerk of the court is required to give notice to all necessary parties. T.R.J.P. 34(e)(2). Notice is to be given by the service of a summons in conformance with the notice requirements of a dependency petition. T.C.A. § 37-1-139(d).

14.06 Conduct of Hearing; Applicable Procedures and Rules of Evidence

If the change of circumstances or newly discovered evidence relates to the adjudicatory hearing, then the procedures and rules applicable to adjudicatory hearings apply. In all other cases, dispositional hearing rules apply. T.R.J.P. 34(e)(4).

15.0 APPEAL TO CIRCUIT COURT⁴

15.01 Appealable Orders; Notice of Appeal; Time Limits

Any party may appeal the final order or judgment in a dependency proceeding to circuit court for de novo review by filing a notice of appeal with the juvenile court clerk within ten judicial days “following the juvenile court’s disposition.” T.C.A. § 37-1-159(a); T.R.J.P. 36. This includes final orders both from original proceedings and from proceedings to modify or vacate orders pursuant to T.C.A. § 37-1-139 and T.R.J.P. 34.

If the order or judgment from which the appeal is taken was from a hearing or de novo rehearing (pursuant to T.C.A. § 37-1-107) by the juvenile court judge, the appeal period commences “the day after the order of disposition is entered.” T.C.A. § 37-1-159(a).

An order from a referee may be appealed directly to the circuit court. In this case, an appeal must be perfected within ten days of the confirmation of the referee’s final order. T.C.A. §37-1-159(a). *See also* T.C.A. § 37-1-107(e).

Review of preliminary dependency rulings may in some situations be obtained by common law writ of certiorari, discussed in Section 17.0, below. Emergency or preliminary placement decisions can also be challenged by writ of habeas corpus. See discussion in Section 16.0, below.

15.02 Record on Appeal

Upon receiving a notice of appeal, the clerk of the juvenile court should immediately forward the juvenile court record, including the findings of the judge and any written reports by court staff or professional consultants, to the circuit court. T.C.A. § 37-1-159(c). However, because the appeal to the circuit court is a de novo hearing, the circuit court, in reaching its disposition, may only consider those parts of the record admitted in evidence pursuant to the applicable rule of evidence.

15.03 Effect of Juvenile Court Judgment Pending Appeal; Stays

The filing of an appeal does not automatically stay the order of the juvenile court. T.C.A. § 37-1-159(b). The circuit court has authority to issue a stay and make any temporary disposition of the child pending appeal that is available under the Juvenile Court Act. *Id.* There is no specific provision authorizing the juvenile court to stay its own order pending appeal. However, the court can do so by incorporating into its order a provision that execution of the order will not occur until the time for appeal has passed, or, if appeal is taken, until the circuit court orders otherwise.

15.04 Setting of Case for Trial De Novo; Time Limits

Appeals from juvenile court are to be set for an early hearing. Some courts by local rule automatically set juvenile appeals once they are perfected. Others place the burden on the party appealing the case to file a motion to set within a specific time of the date of perfecting the appeal on penalty of dismissal of the

⁴This section was adapted from Kozlowski and Shookhoff, “Juvenile Appeals” in *Appellate Practice in Tennessee* (Tennessee Bar Association, 1991, Second Edition).

appeal for failure to prosecute.

A hearing must be held within 45 days of the receipt of the juvenile court record by the circuit court when an appeal is taken from a juvenile court decision involving the removal of a child from the custody of the parent or guardian or from the custody of the Department of Children's Services. T.C.A. § 37-1-159(c).

A party who perfects an appeal to circuit court in compliance with T.C.A. § 37-1-159 is entitled to an expedited hearing in circuit court and that hearing is "to take precedence over other cases except those which are also statutorily mandated to be heard within a specific time frame." *Department of Human Services v. Rogoish*, No. 03A01-9704-CV-00145, 1997 Tenn. App. LEXIS 570, at *4 (Tenn. Ct. App. August 26, 1997).

15.05 Pretrial Procedures; Discovery; No Right to Jury Trial

No formal pleadings are required on appeal to place the case at issue in circuit court. The petition, which served as the lead process in the juvenile court, serves as the basis of the circuit court proceeding and no answer is required. Neither complaints nor answers need be filed, but the Rules of Civil Procedure apply to most other aspects of de novo appeal proceedings before the circuit court. Discovery and pretrial motion practice are handled as in any other civil case. Although the Tennessee Supreme Court has not addressed the issue, the Tennessee Court of Appeals has ruled that there is no right to a jury trial in de novo appeal hearings in circuit court in dependency cases. *Department of Human Services v. Lanier*, 6 TAM 14-17 (Tenn. Ct. App. M.S. February 13, 1981).

15.06 Conduct of De Novo Hearing

A case appealed from juvenile court to circuit court is tried de novo in circuit court, pursuant to the rules of procedure and evidence applicable to any other bench trial in a civil case. Although the entire record of the juvenile court, including the court's findings and written reports, is forwarded to the circuit court on appeal, the circuit court renders its decision solely upon evidence adduced at trial. There is no presumption of correctness of the juvenile court order, and the circuit court judge can consider only those parts of the record that are introduced into evidence pursuant to applicable evidentiary standards.

The petitioning party in juvenile court retains the burden of the petitioner on de novo appeal in circuit court, regardless of which party filed the appeal. This petitioner also retains the right to nonsuit the case, even if it deprives the appellant of an opportunity for "exoneration" from the juvenile court finding. *Lawson v. Bradley*, No. 81-274-2, 7 TAM 24-7 (Tenn. Ct. App. M.S. April 2, 1982).

15.07 Effect of Filing of Other Action in Juvenile Court While Appeal Pending

Filing of another proceeding in juvenile court regarding the child (such as a petition to modify or a termination of parental rights petition) does not authorize the circuit court to delay, suspend, or dismiss (even without prejudice) a de novo appeal. *Rogoish*, above. The only action that would suspend such an appeal would be the filing of an adoption petition. See discussion in Section 2.02, above.

15.08 Judgment of Court; Remand for Enforcement

The judgment of the circuit court is rendered following a de novo hearing. In the final order, the circuit court must remand the case to juvenile court for enforcement of the judgment. T.C.A. § 37-1-159(c).

15.09 Appeal from Circuit Court

Appeals from the orders of the circuit court may be taken to the Court of Appeals pursuant to the Tennessee Rules of Appellate Procedure applicable to other civil appeals from circuit court.

15.10 Expedited Appeals to the Court of Appeals

Editors' Note: Appeals in termination of parental rights cases are discussed in Section 22.0, below. Tennessee Rules of Appellate Procedure, Rule 8A applies to appeals in termination of parental rights cases. Rule 8A does not apply to appeals in child dependency cases.

While the timeframe for most civil appeals is adequate for adults, the same cannot be said for a child. State and federal law require permanency for a child within a restrictive timeframe. Advocates must also consider the impact of delay within the context of the child's perception of time so that appellate review can be accomplished as expeditiously as possible.

Rule 2 of the Tennessee Rules of Appellate Procedure authorizes the Court of Appeals in appropriate cases to suspend the rules, including the time lines for preparation and filing of the transcript, for filing of briefs and for oral argument. A party seeking an expedited appeal should file a motion requesting (1) the suspension of the rules under Rule 2 and (2) a prehearing conference, pursuant to Rule 33, to set an expedited schedule for the appeal.

A memorandum of law should accompany the motion as required by Rule 22. Any facts relied on in support of the motion should either be referenced to the record or, if reference to the record is not possible, supported by appropriate affidavits and exhibits.

A second procedural avenue by which appeals can be expedited is to file a Rule 13 motion under the Rules of the Court of Appeals to expedite a civil appeal. However, parties are advised to use this rule cautiously. Parties waive their rights to a written decision and to review by the Supreme Court under this rule.

15.11 Obligation of Counsel with Respect to Appeal

In all juvenile court cases, counsel has an obligation to ensure that the client is aware of the appellate remedies available, the time limits for perfecting an appeal and the manner for perfecting an appeal.

In addition, counsel has an obligation to act to preserve the client's right to appeal pending decisions as to whether to appeal and pursue appellate remedies at the client's direction as long as counsel remains counsel of record. Because Rule 19(b) of the Tennessee Rules of Juvenile Procedure and Rule 13 of the Rules of the Supreme Court require continued representation by counsel until relieved by the court, counsel's obligations to the client continue until counsel is removed as counsel of record.

Counsel should advise the client about the relative merits of any appeal; however, the decision to appeal is a decision made by the client.

16.0 HABEAS CORPUS⁵

16.01 Introduction

Habeas Corpus has its origin in common law and has developed to a point where it is a primary vehicle to challenge any alleged illegal confinement or other restraint on liberty. Habeas corpus can be utilized under appropriate circumstances to challenge the improper placement of a child in an institution, group home, or foster home. Until the passage of the Juvenile Post Commitment Procedures Act, habeas corpus was the primary mechanism for challenging the legality of a child's commitment to the custody of the DCS based on unruly or delinquent charges. Post commitment relief petitions are now the most appropriate way to challenge such commitments. *See State ex rel. Husky v. Hatler*, 606 S.W.2d 534 (Tenn. 1980); *State ex rel. Bodkins v. Cook*, 633 S.W.2d 477 (Tenn. App. 1981).

Habeas corpus remains an appropriate mechanism to challenge:

- The legality of confinement of a child in a correctional facility when the challenge is based on something other than the legality of the underlying commitment proceeding in juvenile court, *Lawson v. Bradley*, No. 81-274-2, 7 TAM 24-7 (Tenn. Ct. App. M.S. April 2, 1982); *Stephens v. Haskins*, 5 TAM 48-14 (Tenn. Ct. App. M.S. October 31, 1980);
- Other restraints on liberty, such as probation;
- Improper confinement at Tennessee Preparatory School, *David M. v. Rumbaugh*, 6 TAM 29-14 (Tenn. Ct. App. M.S. May 21, 1981);
- The placement of a dependent and neglected child in foster care, *T.H. v. Min.*, 802 S.W.2d 625 (Tenn. App. 1990); or
- The appropriateness of any pre-trial detention.

Private parties may also use habeas corpus to challenge the legality of child custody proceedings.

16.02 Place of Filing; Pauper's Oath; Contents of Petition

A petition for a writ of habeas corpus may be filed in criminal, circuit or chancery court. T.C.A. § 29-21-103. (Under certain limited circumstances not relevant to juvenile court proceedings, municipal courts, corporation courts and courts of general sessions have habeas corpus jurisdiction. T.C.A. § 29-21-106.) The jurisdiction of chancery court is limited to cases of “equitable cognizance.” Although the exact meaning of this limitation on chancery court jurisdiction in habeas cases is not clear, habeas corpus cases arising out of juvenile proceedings have been held to be properly brought in chancery court. *Stephens v. Haskins*, 5 TAM 48-14 (Tenn. Ct. App. M.S. October 31, 1980); *Lawson v. Bradley*, , No. 81-274-2, 7 TAM 24-7 (Tenn. Ct. App. M.S. April 2, 1982).

The petition is generally filed in the court in closest proximity to the petitioner, unless sufficient reason is given in the petition for not applying to that court. T.C.A. § 29-21-105. The required contents of the petition are set forth in the statute. T.C.A § 29-21-107. If the petition attacks the child's confinement, the allegations must include the nature of the confinement and the constitutional basis for asserting the illegality of the confinement. Where a child is the petitioner, it is appropriate for the suit to be filed by his or her next friend. If the child is unable to afford the costs of filing the petition, the child may do so on a

⁵This section was adapted from Kozlowski and Shookhoff, “Juvenile Appeals” in Appellate Practice in Tennessee (Tennessee Bar Association, 1991, Second Edition).

pauper's oath or an oath of the next friend.

A writ is submitted along with the petition to be endorsed by the judge, directing the custodian of the child to bring that child before the court at a designated time to answer to the allegations that the custody is improper. *See* T.C.A. § 29-21-110.

16.03 Dismissal of Meritless Petition; Setting of Case for Hearing

The writ may be refused and no hearing set if the allegations in the petition, even if proven, would fail to support the claim that the confinement or other restraint is improper. The judge may simply note on the petition or an addendum the reasons for the refusal to grant the writ. T.C.A. § 29-21-109. In all other cases, the court must act upon such petitions and immediately set the case for an expedited hearing. T.C.A. § 29-21-108.

16.04 Service of Petition; Response; Issuance of Precept; Arrest of Respondent

Requests for service of the petition and writ and the required answer by the respondent are set forth in the statute. T.C.A. §§ 29-21-112 and 116. Under certain circumstances a precept can be issued demanding the immediate production of the child and the arrest of the person allegedly retaining custody of the child illegally. T.C.A. §§ 29-21-113 - 115.

16.05 Conduct of Hearing

Hearing on the petition is conducted as any civil bench trial. The child has a right to be present and testify although he or she may waive the right. T.C.A. § 29-21-118. An indigent child has a right to court-appointed counsel according to Tennessee Supreme Court Rule 13. (See Section 1.0, above regarding appointment of counsel.)

16.06 Judgment of Court; Costs

The child must be discharged from custody and returned to the custody of his or her legal custodian if no sufficient legal cause for detention is shown. T.C.A. § 29-21-122(a). If custody is found to be proper, the child is remanded to appropriate authorities. T.C.A. § 29-21-122(b). The assessment of costs is set forth in T.C.A. §§ 29-21-124 - 126.

16.07 Appeal

Appeal lies to the Court of Appeals in all cases involving juvenile petitions. *State ex. rel. Anglin v. Mitchell*, 596 S.W.2d 779 (Tenn. 1980). Appeals are governed by the Rules of Appellate Procedure.

17.0 CERTIORARI AND SUPERSEDEAS⁶

17.01 Introduction

Most litigants who are dissatisfied with the results of dependency proceedings in juvenile court will find that de novo appeal to circuit court provides them a speedy and adequate remedy. In other circumstances, habeas corpus proceedings may be appropriate. There are, however, a number of situations in which the de novo appeal process is unavailable or inadequate and habeas corpus procedures do not provide a remedy. Review in such circumstances may be obtained by writ of certiorari.

There are two types of certiorari of general application -- common law (or constitutional) certiorari, and statutory certiorari, T.C.A. §§ 27-8-101 and 27-8-102. *See generally* Cantrell, "Review of Administrative Decisions by Writ of Certiorari in Tennessee," 4 Mem. St. L. Rev. 19 (1973). Certiorari has been replaced by Rule 9 and 10 of the Rules of Appellate Procedure insofar as discretionary review by the Court of Appeals, Court of Criminal Appeals, and Supreme Court are concerned. *See* T.C.A. §§ 27-8-101 and 102. However, in cases heard by general sessions and juvenile courts, certiorari continues to be a method for obtaining discretionary review in those cases in which appeals are not governed by the Tennessee Rules of Appellate Procedure.

In general, common law certiorari is appropriate to review actions of an inferior court when those actions seriously undermine the fairness of the proceeding and no other plain, speedy or adequate remedy exists. Such situations include the following:

- When the court has exceeded its jurisdiction, acted illegally, or failed to proceed according to the essential requirements of the law;
- When a ruling of the court represents a fundamental illegality, or is tantamount to the denial to a party of his or her day in court;
- When the action of the judge is without legal authority or constitutes a plain or apparent abuse of discretion; or,
- When either party has lost a right that may never be recaptured.

See Johnson v. State, 569 S.W.2d 808 (Tenn.1978).

The circuit court has the authority pursuant to common law certiorari "to correct an essential illegality in the action of the juvenile judge which deprived the juvenile of procedural rights assured by federal and state constitutions." *State v. Womack*, 591 S.W.2d 437, 442 (Tenn. App. 1979).

Common law certiorari can be used to obtain review of both interlocutory orders of the juvenile court and final judgments. When an interlocutory order is challenged, the reviewing court will rule on the propriety of the challenged order, but the case will still be tried on the merits in juvenile court. *See, e.g., Womack*, 591 S.W.2d 437. For example, certiorari might be sought if the court denied a discovery request and the denial prejudiced the rights of the party seeking discovery in terms of allowing the party adequate preparation for trial. *Id.* The circuit court might rule that the party is entitled to the discovery. The case would then proceed to trial in juvenile court with the party having the benefit of the discovery sought.

⁶This section was adapted from Kozlowski and Shookhoff, "Juvenile Appeals" in *Appellate Practice in Tennessee* (Tennessee Bar Association, 1991, Second Edition).

Common law certiorari from final judgments, on the other hand, results in the entire case being resolved by the circuit court. The case would be removed to the circuit court, where it would be heard as if it had been filed in the first instance in circuit court.

Statutory certiorari is primarily a mechanism for review of final judgments where the party has lost his or her right to de novo appeal to circuit court and a reasonable excuse is offered for failure to appeal. The negligence of the petitioner is not generally considered a reasonable excuse. *See GMAC v. Dennis*, 675 S.W.2d 489 (Tenn. App. 1984). Rather, the appeal must have been defeated by the oppressive or erroneous act of the court; the willful or negligent act of the clerk; the contrivance or procurement of the adverse party; inevitable accident; or the blameless misfortune of the petitioner. *Useton v. Price*, 292 S.W. 2d 788, 793 (Tenn. App. 1956).

For example, certiorari would be appropriate if the juvenile court, in a case taken under advisement, renders a judgment that the party seeking review does not become aware of until after the time for appeal has passed. Similarly, if a party instructed his or her attorney to file an appeal, but the attorney was unexpectedly hospitalized with an illness and failed to file the appeal, certiorari would lie. In each case, the party would simply be seeking by certiorari the de novo hearing on the merits that he or she would have gotten by de novo appeal.

In certain circumstances both statutory and common law certiorari may be appropriate and petitioners can proceed on both. *Roberts v. Brown*, 310 S.W.2d 197 (Tenn. App. 1957). The distinctions between the two and the principles applicable to each may be less than clear in practice. *See, e.g., Johnson v. State*, 569 S.W.2d at 811, 812.

17.02 Procedure to Obtain Writ: Where to File; Contents of Petition

Certiorari in juvenile court cases can be sought either by petitioning the circuit or chancery court. T.C.A. § 27-8-104.

The petition must be sworn and must state that it is the first application for the writ. T.C.A. § 27-8-106. It is not clear whether a second certiorari is permissible. If it is permissible, a second writ could not be sought on the basis of facts alleged in the first petition or facts that are known or should have been known to the petitioner at the time of filing of the first petition. *Gardner v. Barger*, 51 Tenn. (4 Heisk.) 668 (1871).

The petition for certiorari should allege the portion of the judgment from which relief is sought. The petition should allege sufficient facts to support the issuance of the writ. Thus, where common law certiorari is sought, the illegality or abuse of discretion relied upon must be alleged with specificity. In a statutory certiorari case the petition must set forth sufficient reason for failing to appeal.

17.03 Filing Fees; Security for Costs; Pauper's Oath

Ordinarily, the party seeking certiorari is required to give security for court costs and pay a filing fee or must file a pauper's oath in lieu of those costs. However, the original plaintiff who prevailed in juvenile court may be required to post security for costs. T.C.A. § 27-8-111.

17.04 Time Limits

There is no statutory time limit on seeking certiorari from the circuit or chancery court. Courts have held that, at least when sought to be used as a substitute for appeal, it must be applied for at the first term of court after the rendition of the judgment challenged, unless some sufficient cause for the delay is shown in the petition. *Gray Motors v. Fanburg's Garage*, 308 S.W.2d 410 (Tenn. 1957). However, since "terms of court" have been abolished by statute, T.C.A. § 16-2-510, it is not clear how promptly statutory certiorari must be sought or under what circumstances cause for delay must be shown.

17.05 Procedure Following Filing of Petition; Issuance of Writs; Returnable to Circuit Court

The writ will be issued by the judge to whom application has been made if the petition contains sufficient allegations to support the issuance of the writ of certiorari. Although chancery court and circuit court judges may issue the writ, the writ is in all cases returnable to the circuit court. T.C.A. § 27-8-107.

The writ of certiorari will direct the juvenile court clerk to forward to the circuit court the record or certified copies of portions of the record if the certiorari extends only to a part of the proceedings. T.C.A. § 27-8-109.

The clerk will issue a supersedeas that is sought and granted. The supersedeas stays any further action based upon the juvenile court judgment.

17.06 Procedure in Circuit Court; Motion to Dismiss

Writs of certiorari and supersedeas will ordinarily be granted ex parte upon the petitioner's allegations. The first opportunity for the responding party to contest the appropriateness of granting the writs is by way of a motion to dismiss in circuit court. Proof is then taken to determine whether sufficient grounds existed to issue the writs. In cases in which a party seeks a supersedeas on pauper's oath, the responding party must be given notice and an opportunity to be heard. T.C.A. § 27-8-113. Presumably that party could use that opportunity to challenge the issuance of both writs.

17.07 Certiorari from Final Judgment

In cases in which certiorari is granted from a final judgment, the circuit court hears the case de novo and enters its judgment as it would in a civil case filed in the first instance in circuit court. T.C.A. §§ 27-8-117 and 118. Although in certiorari cases from general sessions courts the circuit court enforces its judgments, it appears that in juvenile cases the case should be remanded to the juvenile court for enforcement. *See* T.C.A. § 37-1-159. *But see Weigand v. Malatesta*, 46 Tenn. (6 Cold.) 362 (1869). As with cases appealed de novo to circuit court from juvenile court, the Rules of Civil Procedure generally apply, except that the juvenile court pleadings take the place of the complaint and answer. If a party has a right to jury trial on de novo appeal, so too would the party in a hearing following the granting of certiorari.

Generally, the court must enter a new judgment once the writ of certiorari has been issued, whether the case is heard on the merits or dismissed prior to a hearing (e.g., for failure to prosecute, or upon a motion to quash successfully challenging the issuance of the writ). T.C.A. § 27-8-117 and 118. The only exception to this rule is when the case is dismissed on the ground that the certiorari was wrongly issued.

17.08 Hearings in Common Law Certiorari Cases Involving Interlocutory Orders

In cases in which the common law writ of certiorari is granted to review an interlocutory order of an inferior tribunal, the reviewing court resolves the questions pertaining to the interlocutory order, but the proceedings continue before the lower court following resolution of the interlocutory order. *See, e.g., Womack*, 591 S.W.2d 437.

17.09 Appeal from Circuit Court

Appeals from judgments of the circuit court are pursuant to the Tennessee Rules of Appellate Procedure.

Appeals from the denial of the petition to issue the writ, whether by the circuit, chancery, or to general sessions court judges would be to the Court of Appeals pursuant to the Tennessee Rules of Appellate Procedure.

18.0 TERMINATION OF PARENTAL RIGHTS PROCEEDINGS: CAUSES OF ACTION, JURISDICTION, AND VENUE**18.01 Termination of Parental Rights Causes of Action**

Termination of parental rights requires a finding by clear and convincing evidence that (a) one or more grounds for termination exist and (b) termination is in the best interests of the child. Both issues must be litigated.

18.02 Grounds for Termination

Under Tennessee law, there are nine statutory grounds for termination of parental rights:

- (1) Abandonment, as defined in T.C.A. §§ 36-1-102. *See also* T.C.A. § 37-2-402(10)(A):
 - (a) For a period of four consecutive months immediately preceding the filing of the petition the parent, who knew or reasonable should have known the child's location,
 - willfully failed to visit or engage in more than token visitation, and/or
 - willfully failed to support or engage in more than token support;
 - willful failure to visit or engage in more than token visitation or to support or engage in more than token support of the child's mother during the four months immediately preceding the birth of the child, (1)(A)(iii); or
 - (b) For a parent or guardian who is incarcerated at the time of the filing of the petition, or who has been incarcerated during all or part of the four months immediately preceding the filing of the petition, willful failure to visit or engage in more than token visitation or willful failure to support or engage in more than token support of the child in the four months immediately preceding the incarceration, (1)(A)(iv); or
 - (c) For a parent or guardian who is incarcerated at the time of the filing of the petition or for all or part of the four months immediately preceding the filing of the petition, the parent or guardian has engaged in conduct prior to incarceration which exhibits a wanton disregard for the welfare of the child, (1)(A)(iv); or
 - (d) For a parent or guardian whose child has been removed pursuant to a dependency neglect proceeding and placed in custody of DCS or a licensed child-placing agency, which agency was found to have made reasonable efforts to prevent removal and reasonable efforts to assist the parents, failure of the parents for a period of four months following the removal to make reasonable efforts to provide a suitable home and demonstration of a lack of concern for the child to such a degree that it appears unlikely they will be able to provide a suitable home for the child at an early date, (1)(A)(ii).
 - (e) The child, as a newborn infant aged 72 hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11- 255; and, for a period of 30 days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of 30 days after notice was given under § 36-1-142(e), and no less than 90 days cumulatively, the mother failed to seek contact with the infant through the Department or to revoke her voluntary delivery of the infant. (1)(A)(v).

T.C.A. § 36-1-113(g)(1).

- (2) Substantial noncompliance by the parent or guardian with the statement of responsibilities in the permanency plan; T.C.A. §§ 36-1-113(g)(2); 37-2-403(a)(2)(C).
- (3) Persistence of conditions:
 - (a) The child has been removed by court order from the parent or guardian for more than six months;
 - (b) Conditions which led to the removal or which in all reasonable probability would cause the child to be subjected to further neglect or abuse still persist and prevent the child's safe return to the parent;
 - (c) There is little likelihood the conditions will be remedied at an early date to allow reunification in the near future; and,
 - (d) The continuation of the parent-child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

T.C.A. § 36-1-113(g)(3)(A).

- (4) The parent or guardian has been found to have committed severe child abuse under any prior order of a court or by the court in the termination proceeding against the child, any sibling or half sibling, or any other child residing temporarily or permanently in the home of the parent or guardian. T.C.A. § 36-1-113(g)(4).
- (5) The parent or guardian has been sentenced to (but not necessarily served) more than two years imprisonment for conduct against the child, any sibling or half-sibling, or any other child residing temporarily or permanently in the home of the parent or guardian, which has been found under any prior order of a court or by the court in the termination proceeding to be severe child abuse. T.C.A. § 36-1-113(g)(5).
- (6) The parent has been confined in a correctional or detention facility of any type, by order of a court as a result of a criminal act, under a sentence of ten or more years, and the child is under eight years at the time the sentence is entered by the court. T.C.A. § 36-1-113(g)(6).
- (7) The parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian. T.C.A. § 36-1-113(g)(7).
- (8) The parent or guardian is mentally incompetent to provide for the further care and supervision of the child because the parent or guardian is presently so impaired and is likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future. T.C.A. § 36-1-113(g)(8)(B)(i).
- (9) For a person who, at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child, is not the legal parent or guardian of the child or is a biological father who has not legitimated the child, the person has failed to, without good cause or excuse:
 - (a) Make reasonable share of prenatal, natal and postnatal expenses involving the birth upon the person's receipt of notice of the impending birth;

- (b) Make reasonable child support payments in accordance with the child support guidelines;
- (c) Seek reasonable visitation or, if visitation has been granted, failed to visit or engage in more than token visitation; or,
- (d) File a petition to establish paternity of the child within thirty days after notice of alleged paternity by the child's mother, or by registering with the putative father registry;
- (e) Has failed to manifest an ability and willingness to assume legal and physical custody of the child; or
- (f) Placing custody of the child in his or her legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

T.C.A. § 36-1-113(g)(9)(A).

18.03 Best Interest Determination at the Termination Hearing

In determining whether termination is in the best interest of the child, the court must consider:

- Whether the parent or guardian has made such an adjustment of circumstance, conduct or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- Whether the parent or guardian has maintained regular visitation or other contact with the child;
- Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
- Whether the parent or guardian or other person residing with the parent or guardian has shown brutality, physical, sexual, emotional, or psychological abuse or neglect toward the child, or another child or adult in the family or household;
- Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- Whether the parent or guardian has paid child support consistent with the child support guidelines.

T.C.A. § 36-1-113(i).

18.04 Requirements Under ASFA for DCS to Initiate Termination Proceedings

The Adoption and Safe Families Act of 1997 requires the Department to initiate termination proceedings (or intervene in proceedings initiated by another party) in any case in which:

- The child has been in DCS foster care approximately 15 of the last 22 months; or
- The child has been found to be an abandoned infant; or
- The parent has been found by a court in either a civil or criminal proceeding to have committed murder or voluntary manslaughter of a sibling, half-sibling or any other child residing temporarily or permanently in the home, or the parent has aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or
- The parent has been found by a court in either a civil or criminal proceeding to have committed a felony assault that has resulted in serious bodily injury or severe abuse to the child or to a sibling, half-sibling, or any other child residing temporarily or permanently in the home; or
- The juvenile court has made a finding of severe child abuse.

T.C.A. § 36-1-113(h)(1).

The Department of Children's Services may not be required to file a petition to terminate parental rights under the following circumstances:

- The child is being cared for by a relative; or
- There is a compelling reason, documented in the permanency plan (which is available for the court to review), that termination would not be in the best interests of the child; or
- Reasonable efforts toward reunification are required under T.C.A. § 37-1-166, but the Department has not provided services which the Department deems necessary for the safe return of the child to the home.

T.C.A. § 36-1-113(h)(2).

18.05 Jurisdiction

The juvenile, circuit and chancery courts have concurrent jurisdiction over proceedings to terminate parental rights. T.C.A. §§ 37-1-104(c); 36-1-113(a). The filing of an adoption petition in circuit or chancery court suspends any termination of parental rights proceeding in any other court and confers upon the adoption court jurisdiction over the termination issues. T.C.A. § 36-1-116(f).

18.06 Venue

The petition to terminate parental rights can be filed:

- In the court of county where the child currently resides in the physical custody of the petitioner;
- In the juvenile, circuit or chancery court which entered the prior order by which the petitioner currently holds legal custody or complete or partial guardianship;
- In the court in the county where the child currently resides or which has jurisdiction to adjudicate a termination of parental rights if the petitioner currently has legal custody or complete or partial guardianship of the child under a prior court order or statutory authorization;

- If filed as part of an adoption proceeding, in accordance with the venue requirements of T.C.A. § 36-1-114.

T.C.A. § 36-1-113(4); T.C.A. § 36-1-114.

19.0 INITIATION OF TERMINATION OF PARENTAL RIGHTS PROCEEDINGS**19.01 Who May File**

A termination of parental rights petition may be filed against either parent by any person who has knowledge of the facts alleged or is informed and believes they are true. T.R.J.P. 39(a). Specifically designated by statute as “having standing to file a petition” are: the prospective adoptive parents of the child, including extended family members caring for related children, any licensed child-placing agency having custody of the child, the child’s guardian ad litem, a court appointed special advocate agency, or the Department of Children’s Services. T.C.A. § 36-1-113(b).

19.02 Contents of Petition to Terminate Parental Rights

The petition must be verified (signed under oath) but may be based upon “information and belief” -- the petitioner need not have first hand knowledge of the facts alleged. If the parent whose parental rights are proposed for termination is the legal parent of the child, as defined in T.C.A. § 36-1-102(28), and if the parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death. T.C.A. § 36-1-113(d)(1).

The petition must include statements of the following:

- The child’s name;
- The child’s age or date of birth;
- The child’s place of birth;
- The child’s current residence address or county of residence or that the child is in the custody of the Department of Children’s Services or a licensed child-placing agency;
- The name and address of the petitioner and facts sufficient to properly identify the petitioner;
- The name and address of the parents of the child and, if unknown, the petitioner’s efforts made to ascertain the identity or whereabouts of the parent or parents. This information can be provided in an affidavit and incorporated by reference into the petition;
- The name and address of any person known as guardian of the child;
- the name and address of any person or agency to whom custody of the child has been given by a court (and a copy of the court order giving custody should be attached to the petition);
- The specific factual allegations which are sufficient if true to warrant a determination that one or more of the grounds for termination of parental rights exist, and that termination of parental rights is in the best interest of the child;
- Any other facts which bring the child and the parties within the jurisdiction of the court;
- That the putative father registry has been consulted within ten working days of the filing of the petition and whether there exists any claim on the registry to the paternity of the child;

- If there exists any other claim or potential claim to the paternity of the child;
- Whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise and whether any other such rights must be terminated before the child can be made available for adoption;
- That the petition or request for termination shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or guardian to the child who is the subject of the termination order and of the child to the parent or guardian;
- That the child will be placed in the guardianship of other persons or public or private agencies who, or which, will have the right to adopt the child, or to place the child for adoption and consent to the child's adoption; and
- That the parent or guardian shall have no further right to notice of proceedings for adoption of the child by other persons and that the parent or guardian will have no right to object to the child's adoption or to have any relationship, legal or otherwise with the child.

T.C.A. § 36-1-113(d)(2) and (3); T.R.J.P. 39(a).

Effective July 1, 2004, the petition shall also contain the following notice:

Any appeal of the trial court 's final disposition of the petition for termination of parental rights will be governed by Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of a transcript or statement of the evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate court, as well as other special provisions for expediting the appeal.

T.R.J.P. 39(a) and T.R.C.P. 9A.

19.03 Persons Who Must Be Named As Defendants

The legal parents, guardian of the person of the child, and the biological parents of the child must be made parties to the termination proceeding and served with a copy of the petition. The exception to this is where the parent, legal parent, guardian, or putative father of the child has:

- (1) Surrendered parental or guardianship rights to the child;
- (2) Executed a parental consent which has been confirmed by the court;
- (3) Waived such rights pursuant to T.C.A. § 36-1-111(w);
- (4) Lost parental rights to the child subsequent to a termination of parental rights; or
- (5) Is deceased.

T.C.A. § 36-1-113(c)(3)(B); T.C.A. § 36-1-117(a).

If the mother was married when the child is born or conceived, the husband must be named and served unless there is a court order (e.g. a divorce decree) declaring him not to be the father of the child. If the mother and biological father were not married, the biological father must be served if he was legally declared to be the father by court order, or signed an Acknowledgment of Paternity. The following putative fathers must be served: anyone who has (1) filed a legitimation petition; (2) registered with the

putative father registry; (3) been identified by the mother under oath as the father; (4) claimed to the mother, the petitioner or DCS to be the father; (5) was openly living with the child at the time of removal; (6) is recorded on the child's birth certificate as the father; (7) entered into a permanency plan in which he acknowledged he was the father; or (8) has been identified as the father "by other information that the court determines to be credible and reliable." T.C.A. § 36-1-117(b) and (c).

19.04 Service of Process

Service of process for termination petitions filed in circuit or chancery court is governed by the Tennessee Rules of Civil Procedure and the statutes governing substituted service of process. Service of process for petitions filed in juvenile court is governed by the Rules of Juvenile Procedure and the Juvenile Court Act, where not otherwise in conflict with either the termination statute or the statutes governing substituted service of process. The procedures discussed in Section 3.04, above, in regard to service of the petition in dependency proceedings are applicable to termination of parental rights proceedings in juvenile court. The juvenile court summons in a termination case must notify the person served that failure to appear at the hearing, without good cause, will result in the loss of the right to contest the petition. T.R.J.P. 39(c).

19.05 Special Notice Requirements for Incarcerated Parent or Guardian

Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time the termination proceeding initiated, it must be affirmatively shown to the court that such incarcerated parent or guardian received actual notice of the following:

- The time and place of the hearing to terminate parental rights;
- That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;
- That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that his or her rights should be terminated; and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate;
- That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian, if indigent, will be provided with a court-appointed attorney; and, shall have the right to present testimony by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and
- If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving this special notice of rights, the court may proceed with such action without the parent's or guardian's participation.

T.C.A. § 36-1-113(f).

20.0 PRETRIAL PROCEDURES IN TERMINATION OF PARENTAL RIGHTS; DISCOVERY; AUTHORIZATION TO ORDER EXAMINATION OF CHILD AND/OR PARENT

20.01 Filing of Answer

The Rules of Civil Procedure govern the proceedings in chancery and circuit court. The Rules of Juvenile Procedure govern the proceedings in juvenile court. However, the Rules of Civil Procedure require the filing of an answer. Under the Rules of Juvenile Procedure, there is no requirement that an answer be filed to a termination petition, but a written answer may be filed. T.R.J.P. 39(d).

20.02 Discovery

The parties in juvenile court are entitled to access the same information available to litigants through discovery under the Rules of Civil Procedure although the manner for obtaining that information is subject to local rules of the Juvenile Court. T.R.J.P. 25.

20.03 Authorization to Order Examination

The court may, as it deems necessary, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician or any other appropriate person or agency. If a parent's ability to care for the child is at issue, the court may order a similar examination of the parent. T.R.J.P. 39(f)(3).

21.0 CONDUCT OF TERMINATION OF PARENTAL RIGHTS HEARING

Termination of parental rights trials are conducted in the same manner as other adjudicatory hearings in juvenile court and other bench trials in circuit and chancery court.

21.01 Continuance or Adjournment for Purposes of Receiving Additional Information

The court may, for good cause shown, continue or take the case under advisement for such time as is required for receiving additional evidence, reports or assessments, or any other necessary information. T.R.J.P. 39(f)(4).

21.02 Evidence Admissible; Inapplicability of Statutory Privileges

The Tennessee Rules of Evidence apply to the trial of termination of parental rights petitions in juvenile, circuit, or chancery court. The Tennessee Rules of Juvenile Procedure, in regard to the admissibility of evidence, also apply to the trial of termination of parental rights petitions in juvenile, circuit, or chancery court. T.C.A. § 36-1-113(j).

Neither the husband-wife privilege, physician-patient privilege, psychologist-patient privilege, nor clergy-penitent privilege shall be grounds for excluding evidence in termination of parental rights proceedings. T.R.J.P. 39(f)(5).

21.03 Findings of Fact; Standard of Proof

If the court finds by clear and convincing evidence that grounds for termination exist and the termination of parental rights is in the child's best interest, then it must enter an order granting the petition. Otherwise the court must enter an order dismissing the petition. T.R.J.P. 39(g). The clear and convincing evidence standard is constitutionally mandated. *Santosky v. Kramer*, 455 U.S. 745 (1982). The standard applies to establishing both the grounds for termination and that termination is in the child's best interest. *In re M.C.G.*, No. 01A01-9809-JV-00461, 1999 WL 332729, at *9 (Tenn. Ct. App. May 26, 1999).

The trial court should make specific findings of fact with reference to the specific evidence that the court found clear and convincing. *See e.g., In re Jeremy D.*, No. 01A01-9510-JV-00479, 1996 Tenn. App. LEXIS 292 (Tenn. Ct. App., May 17, 1996).

A juvenile court order terminating parental rights shall award complete custody, control and guardianship of the child to the Department of Children's Services or a licensed child-placing agency with the right to place the child for adoption and consent to adoption in loco parentis. T.R.J.P. 39(g)(3).

22.0 APPEALS IN TERMINATION OF PARENTAL RIGHTS CASES

Appeals in termination of parental rights cases, whether heard in circuit, chancery or juvenile court, and whether from final orders or interlocutory orders, are to the Court of Appeals on the record pursuant to the Tennessee Rules of Appellate Procedure. T.C.A. § 37-1-159(e). Rule 8A of the Tennessee Rules of Appellate Procedure governs appeals as of right in termination of parental rights cases filed on or after July 1, 2004. Rule 8A does not apply to an interlocutory appeal as it is not an “appeal as of right.”

22.01 Rule 8A of the Tennessee Rules of Appellate Procedure

Editor’s Note: This section includes information regarding Rule 8A of the Tennessee Rules of Appellate Procedure. Attorneys should read the Tennessee Rules of Appellate Procedure in its entirety before filing any appeal.

22.01 (a) Application

Rule 8A governs any appeal as of right in a termination of parental rights proceeding. The other rules of appellate procedure also apply to such an appeal; however, when a provision of Rule 8A conflicts with another rule of appellate procedure, the provision of Rule 8A shall control.

22.01 (b) Notice of Appeal

It is not necessary for a party to file a motion to alter or amend the judgment or a motion for a new trial in order to obtain appellate review of the judgment of the trial court. T.R.A.P. 8A(a)(1). In addition to meeting the requirements of T.R.A.P. 3(f) regarding the contents of the notice of appeal, the notice of appeal in a termination of parental rights proceeding shall indicate that the appeal involves a termination of parental rights case. T.R.A.P. 8A(a)(2). The notice of appeal must be filed with the clerk of the trial court within 30 days after the date of entry of the judgment. T.R.A.P. 4(a).

22.01 (c) Stay or Injunction Pending Appeal

Pursuant to Rule 62 of the Tennessee Rules of Civil Procedure or Rule 39(g)(4) of the Rules of Juvenile Procedure, when an appeal is taken from the trial court’s disposition, the trial court in its discretion may stay its order or otherwise suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal. The trial court’s decision regarding a stay or other such relief granted may be reviewed by the appellate court pursuant to Rule 7 of the Rules of Appellate Procedure. T.R.A.P. 8A(b).

22.01 (d) Content and Preparation of the Record

Rule 24 of the Tennessee Rules of Appellate Procedure governs the content and preparation of the record. In addition to the papers excluded from the record pursuant to Rule 24(a), any portion of a juvenile court file of a child dependency, delinquency or status case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record. T.R.A.P. 8A(c).

22.01 (e) Transcript; Statement of Evidence; Procedure When No Transcript or Statement Is Filed; Objections

Any transcript of the evidence or proceedings filed pursuant to T.R.A.P. 24(b) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the transcript as filed, the appellee shall file the objections with the clerk of the trial court within 10 days after service of notice of the filing of the transcript. T.R.A.P. 8A(c)(1).

Any statement of the evidence or proceedings filed pursuant to Rule 24(c) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within 10 days after service of the declaration and notice of the filing of the statement. T.R.A.P. 8A(c)(2).

If no transcript or statement of the evidence or proceedings is to be filed, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve upon the appellee a notice that no transcript or statement is to be filed. If the appellee deems a transcript or statement of the evidence or proceedings to be necessary, the appellee shall, within 15 days after service of the appellant's notice, file with the clerk of the trial court and serve upon the appellant a notice that a transcript or statement is to be filed. The appellee shall prepare the transcript or statement at the appellee's own expense or apply to the trial court for an order requiring the appellant to assume the expense. Subdivisions (c)(1) and (c)(2) of T.R.A.P. 8A are applicable to the transcript or statement filed by the appellee under this section, except that the appellee under this section shall perform the duties assigned to the appellant in subdivisions (c)(1) and (c)(2) of T.R.A.P. 8A and the appellant under this section shall perform the duties assigned to the appellee. T.R.A.P. 8A(c)(3).

Unless the time has been extended by order, if the appellant fails to file within 45 days from the filing of the notice of appeal either the transcript or statement of evidence or notice that no transcript or statement is to be filed, the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant's failure to comply with this subdivision, with a copy provided to counsel and pro se parties. T.R.A.P. 8A(c)(1).

22.01 (f) Approval of the Record by the Trial Judge or Chancellor

After the expiration of the 10-day period for objections by the appellee, the trial judge shall approve the transcript or statement of the evidence and shall authenticate the exhibits. If not approved within 20 days after the expiration of the period for filing objections by the appellee, the transcript or statement of the evidence and the exhibits shall be deemed to have been approved and considered so by the appellate court. If approval did not occur by reason of the death or inability to act of the trial judge the case is governed by T.R.A.P. 24(f). T.R.A.P. 8A(d).

22.01 (g) Completion and Transmission of the Record

The record on appeal shall be assembled, numbered and completed by the clerk of the trial court and transmitted to the clerk of the appellate court within five days of the approval of the record by the trial judge or by operation of the automatic-approval provision, whichever occurs first. T.R.A.P. 8A(e).

22.01 (h) Extension of Time for Completion of the Record

If the record cannot be completed within the time permitted, the clerk of the trial court shall request an extension of time from the appellate court. The request must state the reasons for the requested extension and must be made within the time originally prescribed for completing the record or within an extension previously granted.

Extensions of time for completion of the record in termination of parental rights cases are disfavored and will be granted by the appellate court only upon a particularized showing of good cause.

Trial court clerks shall give priority to completion of the record in termination of parental rights cases over other types of cases. The time for completing the record shall not be extended to a day more than 60 days after the date of the filing of the transcript or statement of evidence or the appellant's notice that no transcript or statement is to be filed.

In the event of the failure of the clerk of the trial court to complete the record within the time allowed, the clerk of the appellate court shall notify the trial court and take such other steps as may be directed by the appellate court.

T.R.A.P. 8A(f).

22.01 (i) Filing and Service of Briefs

The appellant must serve and file a brief within 30 days after the date on which the record is filed with the clerk. The appellee must serve and file a brief within 20 days after the appellant's brief is filed with the clerk. Reply briefs must be served and filed within 14 days after filing of the preceding brief. All other matters regarding briefs of the appellant and appellee shall be governed by T.R.A.P. 27, 28, 29, 30 and 32. T.R.A.P. 8A(g).

22.01 (j) Extensions of Time

Extensions of time in an appeal of a termination of parental rights proceeding are disfavored and will be granted by the appellate court only upon a particularized showing of good cause. T.R.A.P. 8A(i).

22.01 (k) Appeal by Permission from Court of Appeals to Supreme Court

The provisions of Rule 11 control review by the Supreme Court in a termination of parental rights proceeding. T.R.A.P. 8A(h).

22.02 Restrictions on Collateral Attack of Termination of Parental Rights Order

After the entry of an order terminating parental rights, no party to the proceeding, nor anyone claiming under such a party, may later question the validity of the termination by reason of any defect or irregularity, jurisdictional or otherwise, except by timely appeal. A termination cannot be overturned by any court or collaterally attacked by any person or entity after one year from the date of entry of the final order of termination. T.C.A. § 36-1-113(q).

22.03 Review of Decisions of Referee in Termination Proceedings

If a juvenile court referee hears the termination petition, the parties would have the option of a de novo rehearing before the juvenile court judge prior to appealing to the Court of Appeals. The procedures governing rehearing in dependency cases set forth in Section 11.0, above, are applicable in termination cases heard before the referee, with the exception of the calculation of the time for filing a Notice of Appeal in the Court of Appeals. The Notice of Appeal must be filed within 30 days of the final order of the juvenile court. The date of the final order would either be the date of entry of the order of the juvenile

court judge on rehearing or the date of the order of the judge confirming the findings and recommendations of the referee, if no rehearing were requested.

The assignment of a case to a referee for a hearing adds another layer to the appellate process. Because of the importance of expediting the appellate process in termination of parental rights cases, and because these cases are likely to result in appeals being taken, the better practice is for the juvenile court judge to decide the case.

22.04 Stay Pending Appeal

Effective July 1, 2004, when an appeal is taken from the trial court's disposition, the court in its discretion may stay its order or otherwise suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as it deems proper. The trial court's decision regarding a stay, or other such relief granted, may be reviewed pursuant to Rule 7 of the Tennessee Rules of Appellate Procedure by the appellate court. T.R.J.P. 39(g)(4).

22.05 Standard of Review

Rule 13(d) of the Tennessee Rules of Appellate Procedure requires that review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

When the trial court fails to make a specific finding of fact on a particular matter, the review of the fact in the record is a purely de novo review. Issues of law are reviewed de novo upon the record with no presumption of correctness. *In re Valentine*, 79 S.W.3d 539, 542 (Tenn. 2002).

Mixed questions of law and fact require a review of review de novo with no presumption of correctness. *Nash-Putnam v. McCloud*, 921 S.W.2d 170 (Tenn. 1996), citing *Aaron v. Aaron*, 909 S.W.2d 408 (Tenn. 1995).

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PART II: CASE LAW

1.0 JURISDICTION OF JUVENILE COURT IN DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

Editors' note: Case law, especially in dependency and termination of parental rights matters, is constantly evolving. The summaries of cases in Part II of this manual are intended only to guide advocates in their legal research. They cannot be considered an exhaustive review of dependency and termination of parental rights law. Advocates are strongly advised to read each case in its entirety and to diligently research recent decisions. Case law is current through August 31, 2004, however not all cases are included.

Please note that unpublished opinions do not carry precedential value. Copies of unpublished cases cited to the court must be included in appendices to any brief or other paper and furnished to adversary counsel. Sup. Ct. Rule 4(5); Ct. Appeals Rule 12. (Reported Tennessee cases consist of only those cases reported in the South Western Reporter Series.)

1.01 Jurisdiction and Venue

1.01 (a) Jurisdiction

State Dep't of Children's Servs. v. Owens, 129 S.W.3d 50 (Tenn. 2004). S.L.O. was placed in state custody in 1999 after allegations of abuse against her adoptive parents, the Owens, were made. At the time S.L.O. was placed in custody, she lived with her seven biological siblings though S.L.O. was the only child that had been adopted by the Owens. Her siblings were returned to Indiana and later adopted by relatives, the Maddoxes. The record indicates that the Maddoxes did not know that S.L.O. had been placed into state custody in Tennessee. In May 2001 the Maddoxes filed a petition to intervene and for temporary custody. A month later DCS filed a petition to terminate the parental rights of the Owens to S.L.O. The juvenile court heard the termination petition on August 22, 2001, and immediately afterwards heard the Maddoxes' petition. An order filed September 5, 2001, terminated the Owens' parental rights and awarded guardianship of S.L.O. to DCS. On October 9, 2001, the juvenile court entered an order declaring the Maddoxes' petition moot since guardianship had been awarded to DCS. The order did however make a finding that granting custody to the Maddoxes was not in the child's best interest. There were no specific fact-findings to support the best interest determination. The Maddoxes filed a notice of appeal in circuit court. DCS countered by filing a motion to dismiss for lack of jurisdiction alleging that when guardianship was awarded, juvenile court lost jurisdiction to hear custody issues. The circuit court agreed with DCS. The Maddoxes appealed to the Court of Appeals. The Court of Appeals agreed that circuit court did not have jurisdiction to hear termination matters but had the authority to transfer the case to the Court of Appeals and modified the circuit court's order accordingly.

The Supreme Court found that the Maddoxes' petition was a part of the dependency proceeding and not the termination proceeding stating, **"(t)he nature and substance of a proceeding cannot be transformed simply by the filing of a petition with a different caption."** *Id.* at 54. Nor did the Court accept the assertion of DCS that the Maddoxes' petition was superseded by the order of guardianship pursuant to T.C.A. 36-1-113(n). The Court held **"(t)he order which TDCS alleges is superseded is not an order of guardianship, but rather, a pending custody petition....Therefore, the statute is inapplicable under its own terms."** *Id.* at 55. The Court expressed concern that the

Maddoxes despite proper efforts were denied an opportunity to be heard on the merits of their case. The Court ruled **“we deem this an appropriate case to invoke our authority pursuant to Tennessee Rule of Appellate Procedure 36(a). We reverse the judgment of the Court of Appeals and remand the cause to the circuit court, which shall regard the cause as involving dependency and neglect and shall concurrently consider and decide all petitions within that context.”** *Id.* at 57.

***Toms v. Toms*, 98 S.W. 3d 140 (Tenn. 2003).** A dependency petition was filed in juvenile court by the paternal grandmother of the child. The mother subsequently filed a complaint for divorce in circuit court. The juvenile court dismissed the dependency petition without prejudice. The paternal grandparents intervened in the divorce proceedings alleging the children were dependent and neglected and were awarded custody of the children. The mother filed an application for an extraordinary appeal to the Court of Appeals that was denied. She then filed the same in the Supreme Court that was granted. One issue on appeal is whether juvenile or circuit court had jurisdiction to hear the dependency action of the grandparents. The mother argued because the original dependency proceeding filed by the grandparents was filed in juvenile court, T.C.A. § 37-1-103(a) grants exclusive original jurisdiction to the juvenile court over the dependency proceedings. **The Supreme Court held that juvenile court lost jurisdiction upon dismissal of the dependency petition pursuant to T.C.A. § 37-1-103(c) (amended 2001). The Court held that jurisdiction of a dependency petition continues in juvenile court until it is dismissed or the custody determination is transferred to another juvenile, circuit, chancery or general sessions court exercising domestic relation jurisdiction as prescribed by the statute.**

***In re K.A.Y.*, 80 S.W.3d 19 (Tenn. Ct. App. 2002).** Pursuant to T.C.A. § 36-1-116(f)(2) the filing of a petition for adoption in circuit or chancery court suspends a pending custody matter in juvenile court and the court hearing the petition for adoption is not required to decide the pending custody petition.

***In re Hatcher*, 16 S.W.3d 792 (Tenn. Ct. App. 1999).** The juvenile court entered an order of adoption after the mother surrendered her rights to her child to the pre-adoptive parents. The juvenile court vacated the adoption order fifteen months after its entry. The pre-adoptive parents appealed and argued that T.C.A. § 36-1-122(b)(1) prevents parties to adoptions from raising the jurisdictional issue after the order becomes final. The Court of Appeals held that T.C.A. § 36-1-122(b)(1) must be read in conjunction with T.C.A. § 36-1-122(b)(2). **The Court found that since the juvenile court did not have subject matter jurisdiction, the adoption order may be attacked even after one year.**

***State v. George (Green)*, 968 S.W.2d 896 (Tenn. Crim. App. 1997).** When Juvenile Court has original and exclusive jurisdiction over a case, jurisdiction cannot be conferred on another court. *See also Green v. George*, No. 02A01-9711-CH-00279, 1999 WL 252710 (Tenn. Ct. App. April 28, 1999). The Court of Criminal Appeals held that the chancery court did not have jurisdiction to issue a temporary restraining order or to adjudicate a petition for change of custody after the filing and adjudication in the juvenile court of a petition for dependency and neglect. The Court of Criminal Appeals found that “jurisdiction cannot be conferred to a chancery court or circuit court *sua sponte* or by consent of the parties.” 968 S.W. 2d, at 898. Citing *Hicks v. Hicks*, 01A01-9309-CH-00417, 1994 Tenn. App. LEXIS 166 (Tenn. Ct. App. March 30, 1994); *Simpkins v. Greer*, 01A01-9202-CH-00060, 1993 Tenn. App. LEXIS 91 (Tenn. Ct. App. January 29, 1993).

***State Dep't of Human Services v. Gouvitsa*, 735 S.W. 2d 452 (Tenn. Ct. App. 1987).** Permission to appeal denied. *See also Arnold v. Gouvitsa*, 735 S.W.2d 458. **Juvenile Courts have original and exclusive jurisdiction over cases alleging dependency, neglect or abuse.** The Juvenile Court found

children to be dependent and neglected and awarded legal custody to the Department of Human Services. On appeal, the Circuit Court granted father's motion to dismiss the petition on the ground that an earlier Circuit Court order granting custody to the father was *res judicata*. DHS appealed. The Western Section held that exclusive jurisdiction was vested in juvenile court upon the filing of the petition alleging dependency, and the Circuit Court lacked jurisdiction to make an award of custody. This case was consolidated with the appeal of the custody matter arising out of the prior divorce proceedings in the Circuit Court. The Court of Appeals held that, pursuant to T.C.A. § 37-1-103, in all proceedings alleging a child to be delinquent, unruly or dependent and neglected, the juvenile court has exclusive, original jurisdiction. The Court cited *Marmino v. Marmino*, 34 Tenn. App. 352, 238 S.W.2d 105 (1950) and *Kidd v. State*, 207 Tenn. 244, 338 S.W. 2d 621 (1960). The Court, in quoting *Marmino*, stated:

We think it is a sound and simple view that the Chancery Court never loses jurisdiction of the question of custody, that is, the subject matter as part of a divorce proceeding, but the right and power to exercise that jurisdiction upon the person or the minor may be suspended temporarily or permanently either prior to or after the inception of the divorce case by reason of the exercise by the Juvenile Court of the special, exclusive jurisdiction conferred on it to determine whether the minor is "dependent" or "delinquent," as defined by the Statute and hence necessarily to determine custody.

Id. at 456.

The Circuit Court did not have jurisdiction to proceed on the issue of custody on the father's petition, filed as part of the post-divorce proceedings, after the petition alleging dependency was filed in the Juvenile Court. The Court of Appeals remanded the case to the Circuit Court to hear the appeal of the judgment of the Juvenile Court.

State ex rel. Baker v. Turner, 562 S.W.2d 435 (Tenn. Ct. App. 1977). Permission to appeal denied. Court of Appeals **reversed Chancellor whose order gave custody of minor child to mother and precluded child's placement in foster care**. Parties were divorced in Chancery in December 1972, and custody awarded to mother with visitation by paternal grandfather. In July 1976, father and grandfather reported to Juvenile Court that the child was allegedly being beaten by mother, and filed a dependency and neglect petition. The child was placed in foster care after interviews with all involved. Mother filed for habeas corpus in Chancery. After the September 1, 1976 hearing, the Chancellor enjoined father, grandfather, Juvenile Court and DHS employees from interfering with the mother's custody. The Appellate Court overruled motion to dismiss appeal in order to decide "crucial question" of whether **Juvenile Court has exclusive jurisdiction to hear dependency and neglect petitions**. The court reviewed *Marmino v. Marmino*, 34 Tenn.App. 352, 238 S.W.2d 105 (1951), and *Kidd v. State*, 207 Tenn. 244, 338 S.W.2d. 621 (1960), and concluded that the juvenile court does have "exclusive jurisdiction to hear and determine the petition which charges that the child is dependent and neglected." 562 S.W.2d., at 437.

State Dep't of Children's Servs. v. R.S., No. M2002-00919-COA-R3-CV, 2003 Tenn. App. LEXIS 657 (Tenn. Ct. App. September 11, 2003). The children were placed in DCS custody by the juvenile court and a termination of parental rights petition was brought in circuit court. **The circuit court denied the petition to terminate the parents' rights filed by DCS and ordered DCS perform a home study and prepare a plan for the return of the children to the parents**. DCS appealed. The Middle Section affirmed the trial court's dismissal of the petition to terminate parental rights. However **the Court vacated the portion of the order regarding the return of custody to the parents and held that once the termination petition is dismissed, the authority of the "court hearing only the termination matter ends....Where there is an unappealed order finding the children dependent and neglected and awarding custody, jurisdiction reverts to the juvenile court that entered that order.** *Id.* at *66.

See also, *In re DMD*, No. W2003-00987-COA-R3-PT, 2004 Tenn. App. LEXIS 381 (Tenn. Ct. App. June 17, 2004).

State Dep't of Children's Servs. v. R.M.M., No. E2001-02678-COA-R3-JV, 2002 Tenn. App. LEXIS 679, (Tenn. Ct. App. September 23, 2002). Eastern Section **held juvenile court has jurisdiction to proceed on a termination of parental rights petition during the pendency of an appeal of its prior order determining dependency and neglect involving the same parties.** The Court cited *In re T.H.*, No. 01-A-01-9412-JV-00600, 1996 Tenn. App. LEXIS 218 (Tenn. Ct. App. April 10, 1996).

In the Matter of H.N.R., No. M2001-02264-COA-R3-JV, 2001 Tenn. App. LEXIS 968 (Tenn. Ct. App., November 21, 2001). The Department of Children's Services appealed an order of the juvenile court transferring a case pursuant to T.C.A. § 37-1-112 (as amended in 2001) to the circuit court that was initiated by a dependency petition in juvenile court. **The Middle Section held the order was ineffective to transfer jurisdiction to the circuit court because it failed to include the findings required by T.C.A. § 37-1-129(a)(2). The Court stated the statute does not authorize the transfer of a dependency petition, only a transfer of the custody determination.**

Department of Children's Servs. v. Galvin, No. 03A01-9807-CV-00233, 1999 Tenn. App. LEXIS 257 (Tenn. Ct. App. April 16, 1999). Permission to appeal denied, 1999 Tenn. LEXIS 445. Eastern Section reversed and remanded the judgment of the circuit court. The circuit court dismissed the termination of parental rights petition and ordered that the children be returned to their parents within 90 days. The Court of Appeals found clear and convincing evidence to terminate parental rights. The Court held that “[h]ad the trial Court terminated the parental rights, T.C.A. § 36-1-113(1)(m) confers broad dispositional powers upon the court, but when termination is not ordered, the case obviously stands dismissed and the authority of the Court is at an end. Jurisdiction reverts to the Juvenile Court when there is an unappealed order finding the children to be dependent and neglected.” *Id.* at 10-11.

Baltz v. Knight, No. 01A01-9606-JV-00263, 1998 Tenn. App. LEXIS 764 (Tenn. Ct. App. November 13, 1998). **Juvenile Court must be exercising jurisdiction, pursuant to T.C.A. § 37-1-103, before it may interfere with custody decisions made in the context of divorce proceedings.** Middle Section found that juvenile court did not have subject matter jurisdiction to modify a decree of another state involving custody of children. Parents were divorced in Arkansas, mother was awarded custody of two children and moved to Tennessee. Father moved to Georgia. Six years after the divorce, the parents entered an agreed order in juvenile court in Tennessee awarding custody of one child to the mother and the other child to the father. Mother subsequently filed pleadings requesting the juvenile court to declare the order void for lack of subject matter jurisdiction and filed a petition in chancery court to enroll and enforce the Arkansas custody decree. The juvenile court declared its order void and the father appealed. The Court of Appeals considered Tennessee's and Arkansas' version of the Uniform Child Custody Jurisdiction Act (UCCJA) and the federal Parental Kidnapping Prevention Act (PKPA), concluding that Tennessee courts have jurisdiction to modify the Arkansas decree because the parents and children had maintained no connection with Arkansas and Tennessee was the children's "home state." The Court of Appeals held that "[u]nless a juvenile court is exercising exclusive jurisdiction under T.C.A. § 37-1-103, it cannot interfere with a custody decision made in the context of a divorce proceeding." *Id.* at *12. The father attempted to rely on T.C.A. § 37-1-104(a)(2) that allows for concurrent jurisdiction with the probate courts to determine custody or appoint a guardian of the person of a child. The Court of Appeals held that this section did not apply as the father did not initiate a guardianship proceeding in the juvenile court.

State v. Thompson, No. 01A01-9511-CH-00538, 1997 Tenn. App. LEXIS 860 (Tenn. Ct. App. December 5, 1997). **A juvenile court may assess child support when another court with concurrent jurisdiction has not previously ordered the parent to pay child support.**

1.01 (b) Venue

In re B.N.S., No. M2003-02524-COA-R3-PT, 2004 Tenn. App. LEXIS 263 (Tenn. Ct. App. April 26, 2004). Hamilton County Juvenile Court placed custody of B.N.S. with her aunt and uncle. The aunt and uncle later moved with B.N.S. to Marion County. Marion County Juvenile Court placed B.N.S. in DCS custody. B.N.S. was placed in a foster home outside of Marion County. DCS filed a petition to terminate the parental rights to B.N.S. in Marion County. The juvenile court granted the termination petition despite the mother's objection that venue was not proper. Mother appealed. **Middle Section reversed the order terminating parental rights, finding that Marion County did not have venue to hear the proceeding pursuant to T.C.A. 36-1-113(d)(4)(C) in that 1) the child did not reside in Marion County nor was B.N.S. in the physical custody of DCS when the termination petition was filed; 2) the Marion County custody order was not a valid order since the Hamilton County had obtained proper jurisdiction over the custody of B.N.S. Hamilton County's jurisdiction continued until the case had been dismissed, transferred to another court with domestic relations jurisdiction or an adoption petition is filed; and 3) that T.C.A. 36-1-113(d)(4)(C) should not be interpreted to enable DCS to circumvent T.C.A. 37-1-103(c).**

State v. Ford, No. 01A01-9704-JV-00171, 1997 Tenn. App. LEXIS 795 (Tenn. Ct. App. November 14, 1997). Petition to rehear denied, 1998 Tenn. App. LEXIS 87. **When a dependency petition is filed in a juvenile court in one county, that court retains jurisdiction of all dependency proceedings.** Middle Section reversed the termination of parental rights order and remanded the case to the trial court to enter an order dismissing the petition for lack of jurisdiction. Children were found to be neglected and dependent by the juvenile court in one county and a petition to terminate parental rights was filed in the juvenile court of another county. Mother claimed improper venue. Court of Appeals found that because of the fundamental liberty interest of parents in the care and custody of their children, there is a strong preference for venue in the "home county" for proceedings to terminate parental rights. The Court of Appeals also found that the trial court lacked jurisdiction because jurisdiction had attached in the county where the children were adjudicated and where custody was granted to DCS.

1.01 (c) Standing

Gonzalez v. Tenn. Dep't of Children's Servs., 136 S.W.3d 613 (Tenn. 2004). Grandparents filed a motion to intervene in juvenile court in a termination of parental rights proceeding. The juvenile court denied the motion but granted the grandparents leave to an interlocutory appeal pursuant to Tenn. R. App. P. 9. The Court of Appeals denied the grandparents' application. The Supreme Court granted the application for permission to appeal and upheld the juvenile court's denial of the motion to intervene. The issue before the Court was whether the trial court erred in denying the motion to intervene as of right. **The Supreme Court held that standing to intervene in a termination proceeding in juvenile court is properly analyzed pursuant to Rule 24 of the Tennessee Rules of Civil Procedure, thus overturning *Skerrett v. Ass'n for Guidance*, No. M2002-00218-COA-R3-JV, 2003 Tenn. App. LEXIS 486, 2003 WL 21634412 (Tenn. Ct. App. July 11, 2003), which held that Tenn. R. Civ. P. 24 is not applicable to proceedings in juvenile court. The Supreme Court further held that the Gonzalazes did not have a right to intervene pursuant to Tenn. R. Civ. P. 24. The Rule allows intervention as of right in three situations: 1) when a statute confers an unconditional right to intervene, 2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties, and 3) by stipulation of all the parties. The Court found that**

“(a)lthough it is conceivable that a grandparent may adduce evidence sufficient to support intervention as of right in a parental termination hearing, we agree with the majority of jurisdictions which hold that the grandparental relationship does not alone support intervention.” *Id.* at 620.

***Osborn v. Marr*, 127 S.W.3d 737, No. M2001-02890-SC-R11-CV, 2004 Tenn. LEXIS 45 (Tenn. S.Ct. January 23, 2004). Supreme Court held a parent does not have standing to file a petition to terminate parental rights pursuant to T.C.A. §36-1-113(g)(6).** Mother filed a petition to terminate the father’s parental rights of a child born out of wedlock after the father was sentenced to a 16-year prison term. The trial court dismissed the petition on an issue unrelated to the standing of the mother and the Court of Appeals reversed. The Supreme Court held that it must determine whether the Court has jurisdiction over the subject matter before review of the substantive issue. “When a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.” *Id.* at *6. Since standing is a subject matter jurisdiction it cannot be waived.

The Court found:

Tennessee Code Annotated section 36-1-113(b) is clear and unambiguous. The statute omits the parent of a child as one of the persons or entities with standing to file a petition to terminate parental rights. The legislature's decision to omit a child's parent from those persons with standing to terminate parental rights is consistent with statutes governing other aspects of a parent-child relationship. A parent has the duty to financially support his or her children. See Tenn. Code Ann. § 34-1-102 (2001); *Gallaher v. Elam*, 104 S.W.3d 455, 461 (Tenn. 2003). When parental rights are terminated, all legal rights and obligations of the parent are severed, including the duty to provide support. See Tenn. Code Ann. § 36-1-113(l)(1) (2001). The termination of a parent's parental rights outside the context of a prospective adoption would deny the child the support of two parents. *Id.* at *8 and *9.

Mother argued she has a fundamental constitutional right to ensure the safety of her child by filing a termination of parental rights petition against an unfit father. The Court held the exclusion of parents from the statute of those having standing “does not impermissibly infringe upon the fundamental right of parent to the care and custody of their children.” *Id.* at *10 and *11. Mother also argued that preventing a parent from having standing violates her equal protection right. The Court held that “a parent seeking to terminate the parental rights of the other parent outside the context of an adoption is not similarly situated to any of the groups listed as having standing” under the statute. *Id.* at 11. The Court vacated the judgments of the lower courts.

***M.H. v. A.H.*, No. E2002-00180-COA-R3-JV, 2002 Tenn. App. LEXIS 884 (Tenn. Ct. App. December 11, 2002). Permission to appeal denied. Eastern Section reversed the judgment terminating the mother’s parental rights because the petitioners did not have standing to file a petition to terminate parental rights. The petitioners had custody of the child but did not seek to adopt the child in the trial court. The Court held in a termination of parental rights proceeding, T.C.A. § 36-1-113(b) is an exclusive list of those who have standing to bring a termination of parental rights petition.**

1.02 The Uniform Child Custody Jurisdiction and Enforcement Act (previously the Uniform Child Custody Jurisdiction Act)

P.E.K. v. J.M., 52 S.W.3d 653, (Tenn. App. 2001). Alleged biological father filed a petition in chancery court for temporary emergency custody and to establish paternity of the child who was not in Tennessee at the time. The mother filed, and the Middle Section granted, a Tenn. R. App. P. 10 application for an extraordinary appeal. The Court of Appeals held, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) enacted in 1999, **T.C.A. § 36-6-219(a) allows the courts of this state to issue a temporary emergency order only “if the child is abandoned in this state or the child or a sibling or parent is subjected to or threatened with abuse in this state.”** *Id.* at 658. The Court found the trial court had no basis to issue the emergency temporary order and remanded the case for further proceedings to determine if this is the child’s “home state.” See the subsequent case of *P.E.K. v. J.M.*, No. M2001-02190-COA-R3-CV, 2002 Tenn. App. LEXIS (Tenn. Ct. App. August 15, 2002). Permission to appeal denied.

In re Copeland, 43 S.W.3d 483 (Tenn. App. 2000). Permission to appeal denied. The trial court terminated the father’s parental rights. He resided in Alabama and his only contact with Tennessee was time he spent visiting relatives. One issue on appeal was whether the trial court erred in asserting jurisdiction under the authority of the Uniform Child Custody Jurisdiction Act (UCCJA) [currently the Uniform Child Custody Jurisdiction and Enforcement Act enacted in 1999] because the father did not have the necessary minimum contacts with the state for the court to exercise jurisdiction over a non-resident party. The Court of Appeals **held a termination of parental rights case constitutes a “custody proceeding” under the UCCJA (T.C.A., Title 36, Part 6). The Court further held that Tennessee courts may adjudicate child custody disputes under the UCCJA even if a parent does not have minimum contacts with the state.**

See also *Baltz v. Knight*, No. 01A01-9606-JV-00263, 1998 Tenn. App. LEXIS 764 (Tenn. Ct. App., November 13, 1998).

1.03 Appeal of Dependency Proceeding

State Dep’t of Children’s Servs. v. Owens, 129 S.W.3d 50 (Tenn. 2004). For description of case see 1.01(a) above.

State, Dep’t of Children’s Servs. (In re D.L.(P.)C.), No. M2003-00088-COA-R3-CV, 2003 Tenn. App. LEXIS 878 (Tenn. Ct. App. December 15, 2003). The mother appealed the trial court’s award of custody of her four minor children to DCS based upon a finding of severe abuse. Specifically, the trial court found that either the mother or father was the perpetrator of the child’s injuries and the other parent failed to protect the child. The Middle Section affirmed the trial court’s ruling and did not require that one of the parents be named as the perpetrator of the abuse.

Fletcher v. Fletcher, (In re K.B.F.), No. E2001-01223-COA-R3-JV, 2002 Tenn. App. LEXIS 210 (Tenn. Ct. App. March 26, 2002). Maternal grandparents filed a petition for emergency custody in juvenile court “essentially” alleging the children were dependent and neglected and they were awarded custody. Subsequently, the father filed a petition for contempt and requested custody of the children. At a hearing the juvenile court ordered custody remain with the grandparents and awarded visitation with the father. **The father appealed to the circuit court and that court dismissed the appeal stating the subject matter of the order was custody, visitation and contempt and therefore the appeal was to the Court of Appeals. The Eastern Section vacated the judgment of the circuit court and remanded the case for a hearing *de novo* of the father’s appeal pursuant to T.C.A. § 37-1-159(a).**

See also *In re McBee*, No. 88-129-II, 1988 Tenn. App. LEXIS 535 (Tenn. Ct. App. August 24, 1988).

2.0 FUNDAMENTAL LIBERTY INTERESTS OF PARENTS

2.01 Parents' Rights to Raise Their Children

2.01 (a) Requirement of Finding of Substantial Harm or Other Compelling Reason for State Intervention

Nash-Putnam v. McCloud, 921 S.W.2d 170 (Tenn. 1996). **If there has been a hearing commensurate with due process and a finding of “substantial harm to the child,” a court may then engage in making a general “best interest of the child” evaluation to determine custody.** The Supreme Court affirmed the termination of the mother’s parental rights based on the mother’s failure to protect her child from severe physical abuse by the father. The mother’s failure to protect constituted “substantial harm.”

The child was placed in custody of the Department of Human Services at 2 months of age in 1989. The father was arrested for aggravated assault and battery, and the mother for failing to protect her child. An order of the Juvenile Court denying a request to terminate the mother’s visitation was appealed to the Circuit Court. On the date of the appeal in Circuit Court, the foster parents filed a petition to terminate the mother’s parental rights and adopt the child. The Circuit Court entered an order terminating the mother’s visitation. The Court of Appeals voided the Circuit Court’s order for lack of jurisdiction, but remanded the case on the petition to adopt, to decide two issues: (1) whether the mother’s parental rights should be terminated, and (2) whether adoption should be ordered.

In 1993, the Circuit Court heard the petition to adopt and terminated the mother’s parental rights based on persistence of conditions, severe child abuse and the mother’s sentence of more than two years imprisonment. The Court of Appeals affirmed. The Supreme Court agreed.

The Supreme Court began its analysis with the earlier cases of *In re Adoption of Female Child, Bond v. McKenzie*, 896 S.W.2d 546 (Tenn. 1995) and *Petrosky v. Keene*, 898 S.W.2d 726 (Tenn. 1995). Parents are entitled to the custody and companionship of their children, the court said, but that natural right is not inalienable. The state may interfere only if there is a compelling state interest. But if there has been a hearing commensurate with due process, and a finding of “substantial harm to the child,” a court may then engage in making a general “best interest of the child” evaluation to determine custody. 921 S.W. 2d, at 174. The Supreme Court found that the proof supported a finding of substantial harm to the child, that the mother was responsible for injuries and resulting harm to the child caused by her husband’s abuse, that she knew it was happening and failed to protect the child. This, the Court said, meets the constitutional requirements of notice and proof of substantial harm justifying intrusion upon the mother’s parental rights.

Petrosky v. Keene, 898 S.W.2d 726 (Tenn. 1995). **Unless there is evidence of substantial harm, parents’ fundamental interest in parenting a child precludes a best interest determination of custody.** The Supreme Court reversed the Court of Appeals judgment awarding custody of the child to the grandmother and granted custody to the father. The Supreme Court held that the father had not “forfeited his parental rights by failing to establish a substantial relationship with the child.” The Court also found that there was no evidence of substantial harm, “therefore, [the father] has a fundamental interest in parenting the child that precludes a best interest determination of custody.” *Id.* at 728.

Ray v. Ray, 83 S.W.3d 726; (Tenn. Ct. App. 2001). **In determining “substantial harm” to a child the Court of Appeals held “substantial” indicates two factors:**

First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. n7. Second, it indicates that the harm must be more than a theoretical possibility. While the harm need not be

inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

Id. at 732.

The Court held the burden of proof in determining substantial harm is the “clear and convincing” standard that is used in termination of parental rights cases. In addition, the standard of review is also the same as in termination proceedings and is a presumption that the trial court’s finding of facts is correct unless the evidence preponderates otherwise, pursuant to Tenn. R. App. P. 13(d).

***O’Daniel v. Messier*, 905 S.W. 2d 182 (Tenn. Ct. App. 1995). Where statutory ground of abandonment failed, the findings concerning best interest were set aside.** Middle Section concluded that mother maintained her relationship with child despite disadvantaged circumstances and family strife. She did not relinquish her daughter voluntarily and made several unsuccessful efforts to have custody returned to her. The Court stated that “since we have determined that the record does not contain clear and convincing evidence that Ms. Messier abandoned Amanda, we must set aside the trial court’s findings concerning Amanda’s best interests.” *Id.* at 190.

***State v. Cox*, No. M1999-01598-COA-R3-CV, 2001 Tenn. App. LEXIS 496 (Tenn. Ct. App. July 17, 2001).** At a permanency hearing in a dependency proceeding the juvenile court judge modified the permanency goal from reunification to adoption and terminated the mother’s visitation with the child. The mother appealed the judgment *de novo* to the circuit court. The circuit court affirmed the juvenile court’s order and the mother appealed to the appellate court. One issue alleged on appeal whether the evidence preponderated against the trial court’s decision to change the goal of the permanency plan to termination of parental rights and terminate the mother’s visitation. **The Middle Section found the circuit court had determined visitation would pose a substantial risk of harm to the child and affirmed the trial court.**

2.01 (b) Liberty Interests of Putative Fathers

***Nale v. Robertson*, 871 S.W.2d 674 (Tenn. 1994).** A petition to legitimate a child filed prior to an adoption petition must be decided, and decided adversely to the putative father, before the adoption petition may be considered. Supreme Court ordered the father’s petition for legitimation be granted and petitions for termination of parental rights and adoption be dismissed.

Child was born in October 1990, out of wedlock. Natural father went to hospital, but was not allowed to see the child. Before birth, he had told the mother he wanted custody if she did not, but she said she would never give up child for adoption. Nevertheless, two days after birth, child was given to adoption agency and placed with appellants. Five days after birth, father filed “notice of intent to claim paternity.” The adoption agency did not learn of this for three months. In March 1991, agency filed a petition to terminate the father’s parental rights. He learned of the whereabouts of the child in May 1991, responded to the petition for termination, and filed a petition to legitimate in Juvenile Court in June 1991.

Appellants, the Nales, filed a petition to adopt in August 1991, based on the ground of abandonment, prior to any hearing in Juvenile Court on the petition to terminate and the petition to legitimate. Father petitioned in Circuit Court for visitation on August 30, 1991. On September 13, 1991, he petitioned to legitimate in opposition to the Nales’ adoption petition. On September 18, 1991, Circuit Court denied the petition for visitation privileges. Father began contributing support in October 1991.

By June 1992, the prospective adoptive parents had amended their petition to withdraw the claim of abandonment and simply assert adoption was in the best interest of child. The circuit court limited proof

to that issue. On August 13, 1992, the Circuit Court granted the petition for adoption. The Court of Appeals found error in failing to dispose of the petition for legitimation first and remanded.

The Supreme Court found: “The Court of Appeals held correctly that a petition to legitimate a child filed prior to an adoption petition must be decided, and decided adversely to the putative father, before the adoption petition may be considered.” *Id.* at 677. “The Court of Appeals, in an appropriate response to the Nales’ contention that the determinative issue was [the child’s] best interest, stated:

Any child’s interest will be served by being raised by two loving parents in a happy home . . . [but] visions of the idealized traditional nuclear family must give way to the stark reality . . . that others may be better parents or may be able to raise a child in more affluent surroundings are not sufficient reasons in and of themselves to deny a petition to legitimate. . . **A trial court may not deny a legitimation petition simply because persons other than the biological father wish to adopt the child. Biological bonds should not be so lightly brushed aside, and the courts should not be given a license to engage in social engineering by invoking the “best interests of the child.”**

Id. at 677-78. (Emphasis added). Supreme Court affirmed that parents have a fundamental liberty interest in the care and custody of their children under both U. S. and Tennessee Constitutions. (Citing *Stanley v. Illinois* and *Hawk v. Hawk*). The Court cited those U. S. Supreme Court cases that distinguished between unwed fathers who pursued relationships with children and those who did not. **The Court rejected the contention that *Hawk* limited the protection of parental rights to “an intact nuclear family with fit parents” as untenable.** *Id.* at 680.

2.01 (c) Liberty Interests of Parents as Compared to Others

***Blair v. Badenhope*, 77 S.W.3d 137 (Tenn. 2002). Supreme Court held “our Constitution does not accord natural parents a presumption of superior rights to modify an existing and valid order of custody, even when that order results from the parent voluntarily agreeing to give custody to the non-parent.” *Id.* at 148 (emphasis added.). The Court found natural parents enjoy the presumption of superior rights in four circumstances:**

1) when no order exists that transfers custody from the natural parents; 2) when the order transferring custody from the natural parent is accomplished by fraud or without notice to the parent; (3) when the order transferring custody from the natural parent is invalid on its face; and (4) when the natural parent cedes only temporary and informal custody to the non-parents. *Id.* at 143.

If these circumstances do not exist and the initial custody order was valid, **the standard to apply in modification of a custody award is whether a material change in circumstances has occurred which makes a change in custody in the child’s best interest.** The burden of proof rests on the parent seeking the change of custody.

***In re Askew, Lewis v. Donoho*, 993 S.W.2d 1 (Tenn. 1999). Depriving a parent of custody of a child, absent a finding of substantial harm, is an abrogation of the parent’s constitutional right to privacy.** Supreme Court reversed the lower courts’ decisions requiring the mother to carry the burden of proof to regain custody of her child where there had been no initial finding of substantial harm to the child. The child was placed in the custody of a distant relative by the juvenile court and remained in her custody for approximately eight years. The mother filed numerous pleadings for return of custody. The Supreme Court held the lower courts misapplied the test for modification of custody by placing the burden on the

mother to show a change of circumstances and that a change of custody would not result in substantial harm to the child.

***Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993). The Court reiterates parents' constitutional rights to raise their children as they see fit. The Tennessee Constitution "protects the privacy interest of these parents in their child-rearing decisions, so long as their decisions do not substantially endanger the welfare of their children." *Id.* at 582. (Emphasis added.) Supreme Court reversed Court of Appeals and trial court's decision to award visitation to the paternal grandparents, pursuant to T.C.A. § 36-6-301. Supreme Court held that the application of the statute to the facts in the case violated Article I, Section 8 of the Tennessee Constitution.**

***Means v. Ashby*, 130 S.W.3d 48 (Tenn. Ct. App. 2003). The trial court denied the termination of parental rights petition filed by the legal custodians parents but ordered that custody remain with the legal custodians. The Court of Appeals affirmed the denial of the termination of parental rights petition of both the father and mother; vacated the portion of the order that continued custody with the legal custodians; and remanded the case to the trial court for further consideration in regard to *Blair v. Badenhope*, 77 S.W.3d 137 (Tenn. 2002). The Court reviewed the original order placing custody with the petitioners and determined that process was not served on the father prior to the entry of the order and therefore did not bind the father. The Court held the original custody order fell within the second exception set out in *Blair*, specifically that the order transferring custody from the father was accomplished without notice to him; therefore the father should be afforded the presumption of superior rights over a non-parent and the analysis mandated by *In re Askew*, 993 S.W.2d 1 (Tenn. 1999) should be applied. This analysis requires a specific finding of substantial harm to the child.**

The Court further held that **the analysis to be applied to the mother is to first determine the effect of the initial custody order on her. The Court found that based on the record it could not determine whether the fourth exception under *Blair* applies to the mother, specifically whether she ceded only temporary and informal custody to the petitioners. If the order is determined to be effective as to the mother, she would have to show a material change in circumstances to be awarded custody. However, if the order is not effective, the analysis of *Askew* applies.**

***In re C.L.J.*, No. M2003-01949-COA-R9-JV, 2003 Tenn. App. LEXIS 793, (Tenn. Ct. App. November 7, 2003). Parents of the child never married and were involved in a "protracted, bitter custody dispute" until the father's death. Prior to his death, the parties had joint custody with the father as primary custodian and the mother had supervised visitation. Upon the father's death, the paternal aunt and uncle filed a petition for custody. The trial court granted them temporary custody and determined that the mother could gain custody only if she proved she could adequately parent the child. The mother was granted an interlocutory appeal to determine whether the trial court applied the correct legal standard for custody between a biological parent and non-parent. The Middle Section held:**

What the juvenile court currently has before it is an initial petition for custody filed by persons who are not C.L.J.'s biological parents. J.A.G., the child's biological mother, has never relinquished custody to a non-parent, nor has a court previously awarded custody of C.L.J. to a non-parent. Accordingly, J.A.G. is entitled to invoke the superior rights doctrine. She cannot be deprived the custody of C.L.J. unless the court finds, by clear and convincing evidence, that placing C.L.J. in her custody will expose him to a substantial risk of harm. *Id.* at *15.

***In re Campbell*, No. 01A01-9802-JV-00086, 1998 Tenn. App. LEXIS 634 (Tenn. Ct. App. September 23, 1998). Biological father's parental rights are paramount to a stepfather's rights. Middle Section vacated the judgment of the juvenile court awarding custody of the child to the stepfather and remanded**

the case for a hearing on the father's petition for custody. The Court of Appeals found the father was provided notice that the hearing in juvenile court would involve an adjudication of delinquent child support. He was not provided notice that the hearing was also to adjudicate custody of the child and was not prepared to present evidence supporting his claim for custody. The record contained evidence that the father had established a relationship with his daughter and had at least a "colorable claim" to her custody. Further, it was found that "[e]ven if he had been prepared to present evidence, there is some indication in the record that the juvenile court would not have considered it because of the agreement between [the stepfather] and [mother] to give custody of Laura to [the stepfather]. This was error." *Id.* at *10. The case was remanded to the trial court to hear the issue of whether the father had established a sufficient parental relationship with his daughter that would entitle him to custody; and, that should he be awarded custody, his daughter would not be exposed to substantial harm.

2.01 (d) Material Change in Circumstances

Blair v. Badenhope, 77 S.W.3d 137 (Tenn. 2002). Supreme Court held:

there are no hard and fast rules for determining when a child's circumstances have changed sufficiently to warrant a change of his or her custody." *Solima v. Solima*, 7 S.W.3d 30, 32 (Tenn. Ct. App. 1998). Nevertheless, **the following factors have formed a sound basis to determine whether such a change has occurred: the change has occurred after the entry of the order sought to be modified and the change is not one that was known or reasonably anticipated when the order was entered, see *Smith v. Haase*, 521 S.W.2d 49, 50 (Tenn. 1975), and the change of circumstances is one that affects the child's well-being in a meaningful way, *Hoalcrafft v. Smithson*, 19 S.W.3d 822, 829 (Tenn. Ct. App. 1999). *Id.* at 150.**

See also:

Kendrick v. Shoemaker, 90 S.W.3d 566 (Tenn. 2002).

Means v. Ashby, 130 S.W.3d 48 (Tenn. Ct. App. 2003).

2.02 Due Process Rights of Parents

2.02 (a) Right to Counsel, Notice, Interpreter and Transcript

Editors' Note: Tennessee Supreme Court Rule 13 provides a right to counsel for all parents in cases brought under the Juvenile Court Act "in which allegations against the parents could result in finding the child dependent or neglected, or in which there is a petition for termination of parental rights." Tenn. Sup. Ct. Rule 13(d)(7); 13(e).

Keisling v. Keisling, 92 S.W.3d 374 (Tenn. 2002). Supreme Court **reversed the order of the trial court transferring custody of the child where no petition requesting a change of custody had been filed, finding a violation of the notice requirements of due process.** The Court held due process requires:

procedural protections as the particular situation demands. . . Three factors must be considered in determining the procedural protections demanded by a particular situation: "(1) the private interest at stake; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *State v. Culbreath*, 30 S.W.3d 309, 317-18 (Tenn. 2000) (citing *Wilson v. Wilson*, 984 S.W.2d 898, 902 (Tenn. 1998). *Id.* at *8.

In this case the Court found: 1) the private interest is the custody of one's children and is a "fundamental constitutional interest" *Id.* at *14; 2) the risk of erroneous deprivation of custody of children "is substantial when no pleadings exist informing the parent that a change in custody is contemplated by the court." *Id.*; and, 3) no compelling state interest (i.e., emergency) existed to justify "the suspension of the of the basic elements of due process – notice and an opportunity to be heard." *Id.* at *13.

In re S.Y., 121 S.W.3d 358; (Tenn. Ct. App. 2003). One issue presented by the mother on appeal of the termination of her parental rights was whether the juvenile court's failure to appoint her an attorney at the child dependency proceeding violated her due process rights under the federal and state constitutions. The Court of Appeals held "that **any violation of appellant's due process rights, and any violation of the Tennessee Rules of Juvenile Procedure that may have occurred at the dependent and neglect proceeding, was fully remedied by the procedural protections provided Young at the termination hearing**", (citing, *In re Hoover-Crawford*, No. M2000-01655-COA-R3-CV, 2001 Tenn. App. LEXIS 554, 2001 WL 8846044 (Tenn. Ct. App. July 27, 2001), and *State v. Wilkerson*, No. 03 A01-9810-JV-00341, 1999 Tenn. App. LEXIS 618, 1999 WL 775759 (Tenn. Ct. App. Sept. 15, 1999).

In re Valle, 31 S.W.3d 566 (Tenn. Ct. App. 2000). **The Appellate Court reversed the trial court order terminating parental rights due in part to the trial court's reversible error in failing to inform the parents of the right to be represented by an attorney pursuant to Tennessee Rules of Juvenile Procedure 39.** The trial court had appointed an attorney ad litem to represent the mother though there was confusion of the duties expected and the attorney ad litem did not assume an adversary stance. This appointment did not meet the requirements mandated by Rule 39. The Appellate Court also addressed the issue of the necessity of a court interpreter and found that no inquiry was made by the trial court to determine the need of an interpreter. The Court held because a party is entitled to be present at all stages of a trial the "party must be in a position to understand the nature of the case and testimony of the witnesses." *Id.* at 573. **Because of the nature of a termination of parental rights case the Court found it incumbent upon the trial court to be careful in exercising its discretion in appointing an interpreter.**

State ex rel. T.H. by H.H. v. Min, 802 S.W.2d 625 (Tenn. Ct. App. 1990). **Indigent parents' due process rights were violated because they were entitled to court appointed counsel in the dependency proceedings based on factors of *Lassiter* and *Davis*.** The Middle Section reversed, in part, the judgment of the trial court holding that the parents' due process rights were violated because they were entitled to counsel in this particular case. The Court further held there is no absolute right to counsel but each case must be decided based on the criteria in *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) and *Davis v. Page*, 714 F.2d 512 and 516 (5th Cir. 1984). Parents filed a complaint and petition for writ of habeas corpus against the Commissioner of the Department of Human Services seeking return of the child and declaratory judgment that their due process rights were violated by failure of the juvenile court to appoint counsel to represent them in the dependency proceedings. The Chancellor held that the proceedings in juvenile court met the requirements of due process and the parents appealed.

In determining whether due process entitles the parent to the appointment of counsel, the court must examine the parent's interest, the state's interest and the risk that failure to appoint counsel will result in an erroneous decision. *Min* at 626. The Court, citing *Lassiter* and *Davis*, listed several factors to consider in the decision to appoint counsel: (1) whether expert medical and/or psychiatric testimony is presented at the hearing; (2) whether the parents have had uncommon difficulty in dealing with life and life situations; (3) whether the parents are thrust into a distressing and disorienting situation at the hearing; (4) the difficulty and complexity of the issues and procedures; (5) the possibility of criminal

self-incrimination; (6) the educational background of the parents; and (7) the permanency of potential deprivation of the child in question.

In re M.E., No. M2003-00859-COA-R3-PT, 2004 Tenn. App. LEXIS 526 (Tenn. Ct. App. August 16, 2004). **Middle Section vacated the judgment terminating the father's parental rights finding that father had been deprived of his right to counsel.** The trial court initially found that father was entitled to appointed counsel and accordingly appointed counsel to represent father. At some later point the trial court relieved father's appointed counsel without explanation and did not appoint substitute counsel. Father retained counsel on the eve of the termination hearing; however, father's retained attorney was absent for the majority of the hearing and the trial court proceeded with the termination hearing. The court opined, "(t)he foregoing analysis of the performance, or lack thereof, of Father's attorney reveals that it was so inadequate it was equivalent to Father having no attorney. Father had the right to an attorney. It is also apparent that he needed an attorney. This is apparent from the fact the court appointed counsel to represent him at the inception of the case and the judge advised Father during the trial that he needed an attorney to represent him." *Id.* at *49.

In re J.M.C.H., No. M2002-01097-COA-R3-JV, 2002 Tenn. App. LEXIS 822 (Tenn. Ct. App. November 26, 2002). **The Middle Section vacated the termination of parental rights of the mother because the lack of a transcript prevented the Court from determining whether the judgment was supported by clear and convincing evidence.** A private party filed the termination of parental rights proceeding and because of the mother's indigency, she was appointed counsel by the trial court. After the mother filed the notice of appeal, the appellee filed a motion to dismiss the appeal because the mother filed a notice with the trial court pursuant to Tenn. R. App. P. 24(d) stating that no court reporter was present for the hearing and no transcript or statement of the evidence would be filed on appeal. The Court denied the motion. The Court held that in other cases the insufficiency of the record would require the presumption that the trial court's findings would have been supported by the record had it been preserved and filed. However, "the constitutional implications of a termination proceeding require a record of sufficient completeness to permit proper appellate consideration of the parent's claims." *Id.* at *11 The Court held that upon remand, if the trial court determines the mother is still indigent the trial court shall ensure the availability of a sufficiently complete record of the trial evidence and events to allow an appropriate appellate review.

Department of Children's Services v. Agbignor, No. M2000-03214-COA-R3-JV, 2002 Tenn. App. LEXIS 807, (Tenn. Ct. App. November 15, 2002). Permission to appeal denied. The Middle Section affirmed the termination of the father's parental rights to his two biological children. One issue on appeal was whether the father's due process and statutory rights were violated when he was required to proceed with the termination proceeding without counsel. The same attorney represented the father continuously for three years. After being served the petition to terminate parental rights the father did not contact his attorney, left the country for a month and did not contact the attorney upon his return to Nashville. He did not appear for the termination hearing until an hour after it had begun. His attorney filed a motion to withdraw and the trial court granted the request prior to the start of the hearing. When told by the trial judge that he would have to represent himself for the remainder of the proceeding, the father did not offer any complaint about his attorney's services for the prior three years and did not deny his attorney's representations that he failed to contact the attorney for a number of months. **The Court found the father effectively waived his right to representation.**

State v. Layne, No. M2001-00652-COA-R3-JV, 2002 Tenn. App. LEXIS 78, (Tenn. Ct. App. February 1, 2002). The Middle Section **held that failure to notify the mother's attorney of the foster care review board hearing does not constitute reversible error.** The Court found that T.C.A. § 37-1-150, T.R.J.P. 39 and Sup. Ct. Rule 13 create a right to counsel for parents in a proceeding that could result in a finding

of dependency or in a termination of parental rights proceeding. However, the foster care review board does not have the authority to make a dependency or termination of parental rights finding. The board's authority is to make recommendations to the court.

State v. Cox, No. M1999-01598-COA-R3-CV, 2001 Tenn. App. LEXIS 496 (Tenn. Ct. App. July 17, 2001). In a dependency proceeding in juvenile court the mother filed a motion for expanded visitation. After reviewing the pleadings, the court scheduled and held a permanency hearing. The court modified the permanency goal from reunification to adoption and terminated the mother's visitation with the child. The mother appealed the judgment *de novo* to the circuit court. The circuit court affirmed the juvenile court's order and the mother appealed to the appellate court. One issue alleged on appeal was whether proper notice of the adjudication of visitation and the permanency goal was provided to meet due process requirements. The Middle Section held **T.C.A. § 37-2-409 regarding the permanency hearing and periodic reviews for children in foster care provides "statutory notice" of what issues are raised at these hearings.** The purpose of these hearings is to continually review and determine the child's best interests, setting out future goals for providing the child with a permanent home and determining how those goals can best be accomplished. The Court also held the opportunity for *de novo* review of the juvenile court's decision by the circuit court also provided a full and adequate notice of and opportunity to be heard on all issues before the court.

In re Adoption of J.D.W., No. M2000-00151-COA-R3-CV, 2000 Tenn. App. LEXIS 546 (Tenn. Ct. App. August 16, 2000). The Middle Section vacated the order of the trial court terminating the father's parental rights and granting the adoption to the stepfather. The father was not represented by counsel nor was a transcript made of the proceedings. The father first asked for appointed counsel after the trial in a motion for a new trial. **The Court vacated the termination of parental rights and adoption finding that the father's failure to request court-appointed counsel prior to trial does not relieve the court of its affirmative duty to inform the parent of the right to counsel.**

In addition to the due process violation for lack of representation, the father claimed there was not clear and convincing evidence to support a termination of parental rights. Since there was no transcript, the trial court adopted its findings of fact in the Memorandum Opinion as the "Statement of the Evidence" for appellate purposes. The Court held:

(I)n cases involving the termination of parental rights, a record of the proceeding of sufficient completeness to permit proper appellate consideration of the parent's claims must be made in order to preserve that parent's right to an effective appeal. If the parent whose rights are to be terminated is indigent, then the trial court must ensure that such a record is created and made available to a parent who seeks to appeal. *Id.* at *13

The Court held that **even in cases such as this, where the termination of parental rights petition is not brought by the state but by a private party "the state is required to provide a record because state action is invoked by asking a court to end a parental relationship."** n.5. *Id.*, at *14. (Citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 116, 117 S.Ct. 555, 564, 136 L.Ed.2d 473, 488. Because there was not a sufficient complete record for review, the Court vacated the orders terminating the father's parental rights and granting the subsequent adoption and remanded the case to the trial court for a new trial. Further the Court found that the trial court must determine the father's indigency and if indigent, "ensure the availability of a record of trial evidence and events which is sufficiently complete to allow an appellate court to review the evidence in accordance with applicable standards." *Id.* at *14.

In re Campbell, No. 01A01-9802-JV-00086, 1998 Tenn. App. LEXIS 634 (Tenn. Ct. App. September 23, 1998). **Insufficient notice on the custody issue violated the father's due process rights.** The Court of

Appeals found the father was provided notice that the hearing in juvenile court would involve an adjudication of delinquent child support. He was not provided notice the hearing was also to adjudicate custody of the child and was not prepared to present evidence supporting his claim for custody. The record contained evidence that the father had a “colorable claim” to custody and should have been provided an opportunity to present the evidence. The case was remanded to the trial court for a hearing on the custody issue.

Department of Children Servs. v. Taylor, No. 03A01-9609-JV-00286, 1997 Tenn. App. LEXIS 196 (Tenn. Ct. App. March 19, 1997). **Rule 39(f)(2) of the Tennessee Rules of Juvenile Procedure requires that a party without counsel at the beginning of a hearing on petition to terminate parental rights must be informed of the right to be represented by counsel.** Eastern Section reversed the judgment of the trial court terminating the father’s parental rights. The Court held T.R.J.P. 39(f)(2) requires that a party without counsel at the beginning of a hearing on petition to terminate parental rights must be informed of the right to be represented by counsel. Indigent persons have a right to appointed counsel. Trial judge apparently did not consider factors outlined in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), regarding appointment of counsel, which is reversible error.

In re Fillinger, No. 02A01-9409-JV-00223, 1996 Tenn. App. LEXIS 301 (Tenn. Ct. App. May 22, 1996). **Parents were not entitled to court appointed counsel based on factors outlined in *Min*.** Western Section affirmed judgment of trial court terminating parental rights to two children. One of the issues presented by the parents on appeal was whether they were denied due process by the trial court because counsel was not appointed. The Court of Appeals compared the facts of this case with those in *Min*, supra, and held that the two cases were not “so similar” as to require a finding of error by the trial court in failing to appoint counsel.

In re Adoption of Howson, No. 03A01-9301-CV-00072, 1993 Tenn. App. LEXIS 457 (Tenn. Ct. App. July 12, 1993). **Mother was entitled to counsel based on factors outlined in *Min*.** The Eastern Section vacated the judgment of the trial court terminating the parental rights of the mother and remanded the case for appointment of counsel. The Court of Appeals applied the “seven risk factors” of *Min*, supra, and held that the mother was entitled to the appointment of counsel. This case involved only private parties. The Court held in a proceeding to terminate parental rights, “the State shares with the parent an interest in a correct decision.” *Id.* at *4.

See also:

Stokes v. Arnold, 27 S.W.3d 516 (Tenn. Ct. App. 2000).

Department of Children’s Services v. R.C., No. E2000-01939-COA-R3-CV, 2001 WL 291917 (Tenn. Ct. App. March 26, 2001.)

In re K.D.D., No. M2000-01554-COA-R3-JV, 2001 Tenn. App. LEXIS 141 (March 7, 2001).

State v. Pruitt; In Re A.J.P., No. M2000-00416-COA-R3-CV, 2000 Tenn. App. LEXIS 415 (Tenn. Ct. App. June 27, 2000).

2.02 (b) Conduct of Trial

Department of Human Servs. v. Hauck, 872 S.W.2d 916 (Tenn. Ct. App. 1993). Permission to appeal denied. **On the procedural issue of amending a petition on the day of trial, the Court of Appeals said that rules relating to the amendment of pleadings are liberal and trial court’s discretion in allowing amendments at any stage of the proceeding should not be disturbed on appeal unless it plainly appears that such discretion was abused.”** *Id.* at 919. (Emphasis added.) The trial court forbade prejudicial surprise testimony” in its order allowing the amendment of additional grounds for the

termination of rights, and the defendant did not complain that this was violated. Since the issue was not raised, the court presumed no prejudice to defendant.

State v. Lilly, No. W2003-02156-COA-R3-PT, 2004 Tenn. App. LEXIS 300 (Tenn. Ct. App. April 30, 2004). Mother appealed the termination of her parental rights. One issue on appeal was whether the trial court committed prejudicial error when the rebuttal testimony of a witness was allowed in violation of the sequestration rule pursuant to Tenn. R. Evid. 615. **The Western Section held there was a violation of the sequestration rule because the rule was invoked at the beginning of the hearing and the witness did not fall within any of the exceptions of Tenn. R. Evid. 615. However the Court found the error was harmless because the trial court relied upon the witness' testimony in considering the ground of persistence of conditions and the Court affirmed the termination on the ground of abandonment. The testimony did not change the outcome or prejudice the mother.**

Dep't of Children's Servs. v. K.G. (In re K.L.H.), No. E2003-00437-COA-R3-PT, 2003 Tenn. App. LEXIS 863 (Tenn. Ct. App. December 12, 2003). The trial court held a hearing on DCS's petition to terminate the mother's parental rights and took the matter under advisement. Subsequent to that hearing DCS filed a motion for ratification of the permanency plan. The motion was sent to the mother and her attorney, but did not include a hearing date. The trial court began the ratification hearing and took evidence without the mother or her attorney being present. Mother's attorney was notified of the hearing as it was occurring, appeared and informed the court that neither she nor the mother received prior notice. However, the court continued taking testimony. Less than one month after the ratification hearing the judge entered an order, *inter alia*, terminating the mother's parental rights. On appeal the mother raised the issue that the trial court violated her due process rights by allowing testimony at an ex parte hearing. DCS asserts that though neither the mother nor her attorney were present for the entire hearing this constitutes harmless error. DCS also claims that the mother and her attorney had notice of the Department's motion and took no steps to determine when it would be heard. **The Eastern Section vacated and remanded the termination of parental rights judgment. The Court found the mother had a right to be notified and be present with her attorney during all hearings related to the termination of her parental rights. The Court held "(t)he State violated Mother's due process rights by failing to notify her in advance of the hearing date so as to allow Mother and her attorney time to prepare adequately for the hearing and to attend the hearing." *Id.* at *11.**

State v. Everson, No. W2002-01085-COA-R3-JV, 2003 Tenn. App. LEXIS 859 (Tenn. Ct. App. December 11, 2003). Mother appealed the termination of her parental rights. One issue raised on appeal was whether her due process rights were violated because of the "wholesale admission into evidence" of hearsay. Though objections were made by both parties as to hearsay, the judge stated he did not "want a bunch of objections" and assured the attorneys much of the evidence would "go in one ear and out the other." He stated he would consider evidence that was "pertinent" or "important." *Id.* at *30. The Western Section found:

However well-intentioned the trial judge may have been, clearly this was a misguided manner in which to conduct the trial. While we agree with the trial judge's emphasis on the importance of determining the future of the children, and hasten to add the importance of determining the fundamental right of Mother to parent her children, this is not a reason to discard the Rules of Evidence. To the contrary, the Rules of Evidence, premised on basic notions of fair play, become even more essential in cases such as this, where the stakes are so very high. *Id.* at 31.

On appeal the State asserted that the non-hearsay testimony and admissions of the mother provided clear and convincing evidence and the error of the trial court was harmless. **The Court held, even disregarding the inadmissible hearsay, the evidence supported the termination of parental rights.**

In re Z.J.S., No. M2002-02235-COA-R3-JV, 2003 Tenn. App. LEXIS 415 (Tenn. Ct. App. June 3, 2003). The trial court terminated the parental rights of three parents: the mother of both children, the father of K.L.P and the father of M.J.P. The trial court allowed both fathers to be served by publication in the *county paper* based on the allegations in the termination petition that the fathers were unknown. Neither father was present at the trial nor did either appeal the judgment. The mother appealed. **The Middle Section found that both children were born in Arizona and DCS knew the identities of both fathers who had last resided in Arizona. The Court held DCS's efforts to locate the fathers were not diligent or reasonable and the constructive service by publication selected to provide notice was not reasonably calculated to inform the fathers of the proceeding. The Court stated the Tennessee Rules of Juvenile Procedure allow for service by publication if, only after a "reasonable effort," a party cannot be located or address ascertained. The Court found that service of a biological parent "is not a mere perfunctory act undertaken simply to satisfy the technicalities of some statute. It has constitutional dimensions." *Id.* at *19. The Court vacated the portion of the order terminating the parental rights of both fathers.**

State Dep't of Children's Servs. v. T.M.K., No. E2000-02840-COA-R3-JV, 2002 Tenn. App. LEXIS 704 (Tenn. Ct. App. September 30, 2002). Permission to appeal denied. Eastern Section held the **decision of whether to stay civil proceedings for a parent who is incarcerated is left to the discretion of the trial court, affording the prisoner sufficient time for filing briefs and motions and conducting discovery.** The Court held one of the main factors to be considered is whether the inmate will be released from incarceration and able to appear in court within a reasonable amount of time after the suit is initiated. In holding the trial court did not err in denying the mother's motion to hold the proceedings in abeyance, the Court reviewed the facts that the mother would be released one year after the date of the trial, two of the children had been in foster care for eight years and two other children since birth.

State v. Mitchell, No. 03A01-9602- JV-00043, 1996 Tenn. App. LEXIS 723 (Tenn. Ct. App. November 12, 1996). ***Ex parte* contacts by DHS worker with the trial judge combined with the child testifying outside the presence of mother and her attorney were sufficiently egregious to require reversal of the termination of parental rights.**

3.0 EVIDENTIARY AND PROCEDURAL ISSUES

3.01 Burden of Proof

***In re Dunigan*, 658 S.W.2d 112 (Tenn. Ct. App. 1983). The standard of proof at adjudication is clear and convincing evidence. (Dependency Case.)**

***Nash-Putnam v. McCloud*, 921 S.W.2d 170 (Tenn. 1996). Clear and convincing evidence is the standard of proof in a termination of parental rights case.**

***In re C.W.W.*, 37 S.W.3d 467 (Tenn. Ct. App. 2000). The Court of Appeals describes the clear and convincing evidence standard of proof as follows:**

(A) although it does not require as much certainty as the "beyond a reasonable doubt" standard, the "clear and convincing evidence" standard is more exacting than the "preponderance of the evidence" standard. *O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. App. 1995); *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn. App. 1992). In order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence. [**20] *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn. 1992), *O'Daniel v. Messier*, 905 S.W.2d at 188. Such evidence should produce in the fact-finder's mind a firm belief or conviction as to the truth of the allegations sought to be established. *O'Daniel v. Messier*, 905 S.W.2d at 188; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. App. 1985). In contrast to the preponderance of the evidence standard, clear and convincing evidence should demonstrate that the truth of the facts asserted is "highly probable" as opposed to merely "more probable" than not. *Lettner v. Plummer*, 559 S.W.2d 785, 787 (Tenn. 1977); *Goldsmith v. Roberts*, 622 S.W.2d 438, 441 (Tenn. App. 1981); *Brandon v. Wright*, 838 S.W.2d at 536. *Id.* at 474.

See also *O'Daniel v. Messier*, 905 S.W.2d 182 (Tenn. Ct. App. 1995) and *In re M.C.G.*, No. 01A01-9809-JV-00461, 1999 WL 332729 (Tenn. Ct. App. May 26, 1999).

3.02 Evidence

3.02 (a) Children's Testimony

***Rutherford v. Rutherford*, 971 S.W. 2d 955 (Tenn. Ct. App. 1997). Permission to appeal denied. The trial judge has discretion to take testimony from a child outside the courtroom if it is in the best interest of the child; however, the parties' attorneys and court reporter must be present and a transcript of the evidence must be filed on appeal.** The Eastern Section vacated the judgment of the trial court changing custody of the child from the mother to the father. The trial judge interviewed the child alone in chambers. Though the appellant did not explicitly raise the issue, the Court of Appeals held the interview constituted reversible error.

***Department of Human Servs. v. Purcell*, 955 S.W.2d 607 (Tenn. Ct. App. 1997). The determination of the trustworthiness of children's extrajudicial statements regarding abuse or neglect is a matter for the trial court to decide and the decision will not be overturned unless there is a showing of abuse of discretion.** The Eastern Section affirmed the trial court's judgment terminating parental rights of the mother of three minor children on the ground of abandonment and severe child abuse. The mother was

serving a sentence of twenty years for the murder of the children's father that occurred as a violent multiple shooting in the presence of at least one of the children. One issue on appeal was whether the trial court erred by allowing inadmissible evidence including hearsay testimony. The Court held the extrajudicial statements of children, who were under the age of thirteen, regarding abuse and neglect were admissible, pursuant to T.R.E. Rule 803(25)(statement of child). The Court found that the determination of the trustworthiness of the statements is a matter for the trial court to decide and the decision will not be overturned unless there is a showing of abuse of discretion.

Department of Human Servs. v. Norton, 928 S.W.2d 445 (Tenn. Ct. App. 1996). Permission to appeal denied. **Children are presumed to be competent witnesses, but this presumption is rebuttable.** The Eastern Section affirmed Juvenile Court's termination of parental rights as to both parents. One issue raised by the parents on appeal was that the trial court improperly failed to allow the children, ages six and seven, to testify at trial. At the trial, the State presented an expert witness in an attempt to rebut the presumption of T.R.E. Rule 601(every person is presumed competent to be a witness except as otherwise provided). The Court of Appeals held that children are presumed to be competent witnesses, but the presumption is rebuttable. The State's witness, who qualified as an expert regarding the competency of the children to testify, opined that requiring the children to testify would not be in their best interest. He stated, "both children shut down in therapy and the responses to me many times is that they just don't want to discuss it. And the higher their anxiety or depression goes, depending on which child you're talking about, the more resistant they are to discussing the issues because of the emotional pain associated with the issues and the blame they put on themselves." *Id.* at 447.

The Court of Appeals held:

The evidence offered does not rebut the presumption of competency, but goes to the propriety of forcing the children to testify in court. If a witness is competent, the Court is required to accept his or her testimony, **but there are circumstances where the Court should tailor the manner in which the evidence is received so as to minimize any harmful effects on the witness.** Apparently no request for receiving the children's testimony under other conditions was made, but the failure of the Trial Judge to allow evidence from the children was error, however, considering the record as a whole, more probably than not this failure did not affect the judgment, due to the substantial, clear and convincing evidence on the issue of termination. *Id.* at 448. (Emphasis added.)

Miller v. Tennessee Bd. Of Paroles, No. 01A01-9806-CH-00293, 1999 Tenn. App. LEXIS 69, (Tenn. Ct. App. Feb. 1, 1999). **In order to make a constitutionally adequate finding that good cause exists for dispensing with the opportunity to confront or cross examine a witness, a parole board hearing officer should have considered three issues: first, the inherent reliability of the child's statements; second, the circumstances under which the child gave her statements (whether the child's statements had been tested for veracity through adversarial questioning); and third, the child's ability to testify, given his or her emotional state.** Hearsay evidence of child sexual abuse was introduced at parole revocation hearing, where underlying offense did not involve a child. Parole Board Hearing Officer revoked Parolee's parole based solely on hearsay evidence of child sexual abuse. Trial court denied Parolee's petition for common law writ of certiorari. Court of Appeals, Middle Section, reversed and remanded trial court's denial. Editors' note: Juvenile court practitioners are encouraged to refer to this case. The footnotes cite many cases and law reviews that address the issue of the reliability of children's statements.

See also:

Scarborough v. Scarborough, 752 S.W.2d 94 (Tenn. Ct. App. 1988).

State Dep't of Children's Servs. v. Hopson, No. E2000-01606-COA-R3-CV, 2001 Tenn. App. LEXIS 234 (Tenn. Ct. App. April 10, 2001). Permission to appeal denied.

In re S.M.C. and J.L.C., No.01A01-9807-JV-00358, 1999 Tenn. App. LEXIS 365 (Tenn. Ct. App. June 11, 1999).

State v. Mitchell, No. 03A01-9602-JV-00043, 1996 Tenn. App. LEXIS 723 (Tenn. Ct. App. November 12, 1996).

Greenfield v. Ferguson, No. 84-198-II, 1985 Tenn. App. LEXIS 2991 (Tenn. Ct. App. July 11, 1985).

3.02 (b) Admission by Party-Opponent

Department of Children's Services v. Whited, No. M2000-03213-COA-R3-JV, 2001 Tenn. App. LEXIS 833, (Tenn. Ct. App. November 8, 2001). **Middle Section held permanency plans were admissible as exceptions to the hearsay rule because the mother signed the plans. The Court found the documents were statements offered by a party in which the party has manifested an adoption or belief in their truth pursuant to Rule 803(1,2) of the Tennessee Rules of Evidence.**

3.02 (c) Use of Guardian Ad Litem Reports

See **Tennessee Supreme Court Rule 40(f): Guardian ad litem to function as lawyer, not as a witness or special master. The guardian ad litem should not submit a "report and recommendations."**

Toms v. Toms, 98 S.W. 3d 140 (Tenn. 2003). A complaint for divorce was filed in circuit court and the pending juvenile court dependency proceeding was dismissed. The paternal grandparents intervened in the divorce proceeding alleging the children were dependent and neglected and were awarded custody of the children without an evidentiary hearing and based exclusively on the guardian ad litem's reports. The mother filed an application for an extraordinary appeal to the Court of Appeals that was denied. She then filed the same in the Supreme Court that was granted. The Supreme Court reversed the trial court **holding that the guardian ad litem's report is an "out-of-court statement made by the guardian ad litem that normally will be introduced for the truth of the statements contained in it" (*Id.* at *10), and is therefore hearsay and not admissible.** Editors Note: This case is cited as it was decided after Sup. Ct. Rule 40 was enacted. The opinion discusses the guardian ad litem's report and testimony in a custody proceeding in circuit court. Subsequent to this decision, the legislature enacted T.C.A. § 36-6-112 which requires the application of Supreme Court Rule 40 when a guardian ad litem is appointed in a child custody or visitation proceeding.

3.02 (d) Access to Records

In re T.K.C., No. W2001-03017-COA-R3-JV, 2002 Tenn. App. LEXIS 937 (Tenn. Ct. App. December 30, 2002). One issue on appeal was whether the trial court erred in ruling that non-disclosed documents in possession of the Department of Children's Services were not relevant or were privileged after an *in camera* inspection of the documents by the trial judge. The Western Section **held the trial court is afforded wide discretion in the admission or rejection of evidence and will be reversed on appeal only upon a showing of an abuse of discretion.**

Editor's Note: T.R.J.P. Rule 25 allows full discovery in juvenile court. *See also State v. Mitchell*, No. 03A01-9602-JV-00043, 1996 Tenn. App. LEXIS 723 (Tenn. Ct. App. November 12, 1996).

3.03 Procedure

3.03 (a) Ratification of Permanency Plan

In re A.W., 114 S.W.3d 541, (Tenn. Ct. App. 2003). One issue on appeal of the termination of parental rights proceeding was whether the permanency plans were nullities because they were not timely ratified by the juvenile court pursuant to T.C.A. § 37-2-403. **The Court of Appeals held though the juvenile court did not meet the statutory deadlines, “these requirements are directory and not mandatory.”** *Id.* at 546.

See also, *In re T. F.*, No. W2001-01935-COA-R3-JV, 2002 Tenn. App. LEXIS 138 (Tenn. Ct. App. February 19, 2002).

3.03 (b) Civil Procedure

In re Petition of Weatherford, No. W1999-01014-COA-R3-CV, 2000 Tenn. App. LEXIS 837 (Tenn. Ct. App. December 29, 2000). Father appealed the termination of his parental rights alleging his procedural due process rights were violated because the trial court failed to dismiss the petition pursuant to his Rule 12.02(6) motion, pursuant to the Rules of Civil Procedure. Father argued the petition failed to allege any grounds for termination, only alleged that the termination of parental rights was in the child’s best interest, and that T.C.A. § 36-1-113(d)(2)(D) requires the complaint state the grounds for termination of parental rights. **The Western Section held Tenn. Civ. Proc. Rule 15.02 provides that when issues are not raised by the pleadings but are tried by express or implied consent, the issues shall be treated as if they had been raised by the pleadings.** The Court found the appellees raised the issue of abandonment in the opening statement and the father testified on that issue at trial. **Though abandonment was not specifically raised in the pleadings it was tried by implied consent.**

3.03 (c) De Novo Appeal

Kelly v. Evans, 43 S.W.3d 514, (Tenn. App. 2001). Permission to appeal denied. Court of Appeals **held the appeal of a referee’s decision to the juvenile judge, who on his own volition decided to hear the matter on the record of the hearing before the referee, did not constitute a *de novo* appeal as contemplated by T.C.A. § 37-1-107(e).** The Court remanded the case for a *de novo* hearing.

See also, *State ex rel. Theus v. Woods*, No. W2002-00342-COA-R3-JV, 2003 Tenn. App. LEXIS 675 (Tenn. Ct. App. September 12, 2003).

3.03 (d) Civil Procedure Surrender of Parental Rights

In re Hatcher, 16 S.W.3d 792 (Tenn. Ct. App.1999). **The Court of Appeals held that though the mother failed to sign surrender documents, after reviewing all the circumstances the proceedings substantially complied with the statutory requirements of a valid surrender.** The Court found that T.C.A. § 36-1-111(k)(1)(C)(i) provides an alternative to the court witnessing the mother’s signature on the surrender form if the court questions the parent on the matters required by the statute.

Dorris v. Crisp, No. M2000-02170-COA-R3-CV, 2001 Tenn. App. LEXIS 410 (Tenn. Ct. App. June 1, 2001). Four months after the mother surrendered her parental rights to her child she filed a petition to set aside the surrender alleging no home study was performed on the home of the pre-adoptive parents to whom she surrendered her parental rights. The trial court granted the petition. The pre-adoptive parents appealed. The Middle Section held the mother effectively surrendered her child and did not attempt to

revoke the surrender within the time prescribed by statute. **The Court found the mother could not expand the statutory time to revoke the surrender by using a procedural defect that was not intended to protect the parent.**

3.04 Order: Findings of Fact and Conclusions of Law

In re D.L.B., 118 S.W.3d 360 (Tenn. 2003). In addressing the grounds for termination, the Supreme Court held:

The trial court is required to find only one statutory ground for termination of parental rights. See Tenn. Code Ann. § 36-1-113 (2001). However, given the importance of establishing the permanent placement of a child who is the subject of a termination of parental rights proceeding, **the trial court should include in its final order findings of fact and conclusions of law with regard to each ground presented. If the trial court addresses each ground that is raised in a termination proceeding, the child's permanent placement will not be unnecessarily delayed due to a remand for findings on alternate grounds.** *Id.* at 367.

The Supreme Court remanded the case to the trial court to address each ground asserted in the termination of parental rights petition.

In re C.R.B., No. M2003-00345-COA-R3-JV, 2003 Tenn. App. LEXIS 804 (Tenn. Ct. App. November 13, 2003). In addressing whether the grounds to terminate parental rights were proven by clear and convincing evidence, the Middle Section **held the order of the trial court terminating parental rights was “fundamentally flawed” as it failed to comply with T.C.A. § 36-1-113(k) that requires trial courts to prepare written findings of fact and conclusions of law in termination cases.** *Id.* at *9. The Court found the statute reflects the legislature’s recognition of the need for “individualized decisions” in termination cases and that findings of fact and conclusions of law “promote the just and speedy resolution of appeals” *Id.* at *11. This mandate does not allow trial courts to comply with “customary practice of making oral findings from the bench and later adopting them by reference in their final order.” *Id.* The failure of the trial court to make the necessary findings not only affects the standard of review but also the “viability of the appeal.” *Id.* at *13. The Court vacated a portion of the order and remanded the case to the trial court to prepare specific written findings of fact and conclusions of law for each of the grounds asserted by DCS.

See also:

In re M.E.W., No. M2003-01739-COA-R3-PT, 2004 Tenn. App. LEXIS 250 (Tenn. Ct. App. April 21, 2004).

State v. McBee, No. M2003-01326-COA-R3-PT, 2004 Tenn. App. LEXIS 85, (Tenn. Ct. App. February 9, 2004).

In re K.N.R., No. M2003-01301-COA-R3-PT, 2003 Tenn. App. LEXIS 915, (Tenn. Ct. App. December 23, 2003).

In re Muir, No. M2002-02963-COA-R3-CV, 2003 Tenn. App. LEXIS 831 (Tenn. Ct. App. November 25, 2003).

3.05 Record on Appeal

In re M.J.B., 140 S.W.3d 643, (Tenn. Ct. App. 2004). Permission to appeal denied. Court of Appeals found that

“(l)ike many other appeals from decisions to terminate parental rights under *Tenn. Code Ann. § 36-1-113*, the record in this case contains many extraneous documents that are not properly includable in the record on appeal....**A termination of parental rights proceeding is not simply a continuation of a dependent-neglect proceeding. It is a new and separate proceeding involving different goals and remedies, different evidentiary standards, and different avenues for appeal.**” *Id.* at 650-651.

The Court advised that all records on appeal in termination of parental rights cases must comply with the opinion in this case and Tenn. R. App. Proc. 8A(c), amended January 15, 2004, and **“should consist only of: (1) the petition to terminate parental rights and all pleadings and other papers subsequently filed with the lower court, (2) a transcript or statement of the evidence of the termination proceedings in the lower court, (3) the original of all exhibits filed in the lower court in the termination proceeding, and (4) any other matter designated by a party and properly includable in the record on appeal.”** *Id.* at 652.

In re C.A.H., No. M2004-00523-COA-R3-PT, 2004 Tenn. App. LEXIS 532, (Tenn. Ct. App. August 18, 2004). Middle Section found the record on appeal contained extraneous documents that did not pertain to the petition to terminate parental rights and stated this has been a problem in prior opinions that the Court has attempted to address without success. The Court held **Tenn. R. App. Proc. 40(g) provides that the clerk of the trial court shall forfeit the clerk’s entire cost, or portion thereof, to prepare and transmit the record for failure to complete the record on appeal in the manner prescribed.** The Court also noted in footnote n5 that **counsel has an affirmative duty to abridge the record and sanctions have been imposed when appropriate.**

See also:

In re M.E., No. M2003-00859-COA-R3-PT, 2004 Tenn. App. LEXIS 526 (Tenn. Ct. App. August 16, 2004).

In re D.L.L., No. M2003-02736-COA-R3-PT, 2004 Tenn. App. LEXIS 469, (Tenn. Ct. App. July 22, 2004).

4.0 LEGAL GROUNDS FOR FINDING OF DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS

4.01 Preliminary Issues

4.01 (a) Requirement of Finding of Substantial Harm or Other Compelling Reason for State Intervention

In re Adoption of Female Child, Bond v. McKenzie, 896 S.W.2d 546 (Tenn. 1995). “[A] parent cannot be deprived of the custody of a child unless there has been a finding ... of substantial harm to the child.” *Id.* at 548. (Emphasis added.)

4.01 (b) Reasonable Efforts to Reunify Family

Editors’ Note: There are two separate references to “reasonable efforts” in the statutes. The first is at T.C.A. § 37-1-166 and mandates at every proceeding prior to ordering a child committed to or retained within the custody of DCS the court must make a finding whether the Department has provided reasonable efforts, consistent with the child’s safety, to: (1) prevent removal of the child from the home, (2) effect prompt reunification of the child and family, and/or (3) effect alternative permanency placement in a timely manner when reunification is not the goal. The best practice is to insist on a reasonable efforts determination at every dependency hearing. The second reference is at T.C.A. § 36-1-113(i) and requires that in a determination of whether the termination of parental rights is in the best interest of the child, the court shall consider, among other factors, whether the parent or guardian has failed to effect a lasting adjustment, after reasonable efforts by the agency, for such a duration of time that adjustment does not reasonably appear possible. There are a series of cases where the courts evaluated the Department’s provision of reasonable efforts, with disparate results among the various courts. In a number of the cases, defense counsel was able to successfully argue that the Department failed to provide reasonable efforts and, as a consequence, the termination of parental rights petition was vacated.

In re A.W., 114 S.W.3d 541, (Tenn. Ct. App. 2003). On appeal of the termination of parental rights judgment one issue raised by the mother was whether DCS failed to provide reasonable efforts to reunify the family pursuant to T.C.A. § 37-1-166(a). **The Court of Appeals held the “more pertinent statute is found in Tenn. Code Ann. § 36-1-113(i);”** citing *Department of Children’s Servs. v. Malone*, No. 03A01-9706-JV- 00224, slip op. p.1 (Tenn. Ct. App. February 5, 1998) {see below}. *Id.* at 546, (emphasis added.) {**Editor’s Note: see, In re C.M.M. below.**} The Court found the mother had substantially corrected all but one of the conditions existing in the home at the time of removal with assistance provided by the Department. The remaining condition was the mother’s mental illness that could only be treated with medication. She refused to take the medication until the termination proceeding was initiated. The Court stated **“(w)e are unsure what additional services short of confinement, DCS could have supplied that would have helped the mother take her medication.”** *Id.* at 547, (emphasis added).

In re M.E., No. M2003-00859-COA-R3-PT. 2004 Tenn. App. LEXIS 526 (Tenn. Ct. App. August 16, 2004). A **termination proceeding based on the persistence of conditions ground, pursuant to T.C.A. 36-1-113(g)(3), requires DCS to demonstrate by clear and convincing evidence that reasonable efforts have been made to reunify the child and parent.** The record reflected that DCS had provided numerous services to the mother, yet failed to provide **the most obvious and essential** service that the mother needed. Specifically, DCS failed to provide the services recommended from a mental health evaluation. The Court opined that failure to provide the recommended psychological therapy to the

mother rendered the services that had been provided **“a waste of time and money.”** *Id.* at 24. Middle Section reversed the decision of the juvenile to court to terminate the mother parental rights finding that DCS had not made reasonable efforts to reunify the children with their mother.

In re C.M.M., No. M2003-01122-COA-R3-PT, 2004 Tenn. App. LEXIS 160 (Tenn. Ct. App. March 9, 2004). Trial court terminated mother’s parental rights on three grounds, T.C.A. § 36-1-113(g)(1) abandonment, (2) substantial noncompliance with the permanency plan, and (3)(A) persistence of conditions. **Middle Section vacated the order terminating the mother’s parental rights because DCS failed to prove that reasonable efforts were made to reunify the family.** The Court addressed the relationship between **“reasonable efforts”** found at T.C.A. § 36-1-113(i) and T.C.A. § 37-1-166. The Court noted that it has previously pointed to T.C.A. § 36-1-113(i) as **“more pertinent”** to termination of parental rights proceedings than T.C.A. § 37-1-166 but has also relied on T.C.A. § 37-1-166 in termination proceedings; and, these statutes must be read in pari material. *Id.* at n23, *25. The Court found that the **“reasonable efforts”** required by T.C.A. § 37-1-166 are **“precisely the same sort of ‘reasonable efforts’”** under T.C.A. § 36-1-113(i). *Id.* at *24.

The Court also found that **“when the termination proceeding involves grounds that implicate the Department’s obligation, ...establishing that it made reasonable efforts to reunite the child with his or her parents is an essential ingredient of the Department’s case. In these cases, the Department has the burden of proving its reasonable efforts even when the parent has not questioned the adequacy of its efforts.”** *Id.* at *28. The grounds that require this burden of proof are those found at T.C.A. § 36-1-113(g)(1) - (3). The grounds found at T.C.A. § 36-1-113(g)(4) - (8) **“usually will not require the Department to demonstrate that it has made reasonable efforts to reunite a child with his or her parents.”** *Id.* at n26 and n27.

When required, the Department must establish that it has made reasonable efforts to reunite the child with his or her parents by **clear and convincing evidence.** *Tenn. Code Ann. § 36-1-113(c).* This heightened burden of proof does not alter the standard by which the Department’s efforts will be judged - **the “reasonableness” standard.** Rather, it simply **requires the Department to present sufficient evidence regarding its reunification efforts to enable the trier-of-fact to conclude, without any serious or substantial doubt, that the Department’s remedial efforts were reasonable under all the circumstances.** *Id.* at *29.

The **procedure** for proving reasonableness is found at T.C.A. § 37-1-166(c)(2) and (3) and requires DCS to **file an affidavit outlining: 1) the necessary services required to reunite the family; 2) those services actually provided to the parents and child; and, 3) whether DCS has had an opportunity to provide the services and, if not, the reasons the services have not been provided.** A detailed affidavit that meets the requirements of T.C.A. § 37-1-166(c)(4) may be sufficient to establish “reasonableness” by clear and convincing evidence. However, **if the parent asserts the efforts were not reasonable, DCS may be required to present additional evidence to the affidavit. “Failure by DCS to present the affidavit “is not fatal if the Department introduces competent evidence specifically identifying the services required in the permanency plan, the services actually provided to the parents, and the outcomes of these services.”** *Id.* at *31. The Court also held that **“(s)imply introducing copies of the contents of the Department’s file will not suffice.”** *Id.* at *31-2.

In determining whether the reasonable efforts made by DCS are reasonable, the trial court must consider the following factors:

(1) the reasons for separating the parent from his or her child or children, (2) the parent's physical and mental abilities, (3) the resources available to the parent, (4) the parent's efforts to remedy the conditions that required the separation, (5) the resources available to the Department, (6) the duration of the parent's remedial efforts, and (7) the closeness of the fit between the conditions that led to the initial separation, the requirements in the permanency plan, and the Department's efforts. *Id.* at *26.

State Dep't of Children's Servs. v. Shortt (In re T.B.S.), No. M2002-02920-Coa-R3-JV, 2003 Tenn. App. Lexis 432 (Tenn. Ct. App. June 10, 2003). Permission to appeal denied. Mother appealed the trial court's judgment to terminate her parental rights raising the issue that DCS failed to present "competent" evidence of the reasonable efforts provided by DCS to reunify the family as no "affidavit of reasonable efforts" was filed pursuant to T.C.A. § 37-1-166(c) in the termination proceeding. **The Middle Section held the appropriate review of reasonable efforts in a termination of parental rights proceeding is pursuant to T.C.A. § 36-1-113.**

Tenn. Dep't of Children's Servs. v. R.G.T., No. E2002-02804-COA-R3-JV, 2003 Tenn. App. LEXIS 408, (Tenn. Ct. App. May 30, 2003). Permission to appeal denied. Father asserted on appeal of the termination of his parental rights that DCS failed to **provide reasonable efforts to prevent removal of the one-day old child from his home pursuant to T.C.A. § 36-1-102(I)(A)(ii)**. The trial court found that though DCS had made no effort to assist the father in doing "anything", the lack of action was reasonable because of the court's previous ruling in a prior termination proceeding of the child's siblings that the parents were mentally incompetent. **Eastern Section held the Department's actions "were reasonable in light of the parents' history with DCS and the previous termination proceedings."** *Id.* at *18, (emphasis added).

Baral v. Bombard, No. M2000-02429-COA-R3-JV, 2002 Tenn. App. LEXIS 407 (Tenn. Ct. App. June 5, 2002). **Middle Section held there is no exception to termination of parental rights where there is an allegation that DCS failed to make reasonable efforts to assist a parent in gaining custody of a child.** The court found that the responsibility to support or visit one's child is squarely placed on the parents pursuant to T.C.A. 36-1-101, *et. seq.*

In the Matter of D.D.V., No. M2001-02282-COA-R3-JV, 2002 Tenn. App. LEXIS 126 (Tenn. Ct. App. February 14, 2002). Middle Section reversed the trial court's order terminating the parental rights of the mother because the grounds of abandonment, nonsubstantial compliance with the permanency plan and persistence of conditions were not proven by clear and convincing evidence. At the termination of parental rights hearing the primary obstacle for reunifying the mother and child was the lack of stable housing. **The Court held DCS did not make reasonable efforts pursuant to T.C.A. § 37-1-166(g)(1) to assist the mother in obtaining housing. The Court stated "the social workers at the Department have an obligation to use their superior insight and training to help their clients with the problems the Department itself has identified, even when not specifically asked to do so by the client."** *Id.* at *22.

In re S.M.C., No.01A01-9807-JV-00358, 1999 Tenn. App. LEXIS 365 (Tenn. Ct. App. June 11, 1999). Middle Section affirmed termination of parental rights. One issue presented by the mother was whether DCS provided reasonable efforts to reunify the family. The Court of Appeals held that DCS provided reasonable efforts beginning when the first child was removed from the home. The Court further found that the mother continued to deny that her husband sexually abused their daughter.

Farmer v. Department of Children Servs., No. 01A01-9610-JV-00485, 1997 Tenn. App. LEXIS 938 (Tenn. Ct. App. December 30, 1997). Middle Section affirmed termination of parental rights in this consolidated appeal. One mother complained that DCS did not make reasonable efforts to reunify the family prior to the termination of her parental rights. The Court held that every assistance was given to reunite the family, but the mother continued to deny that any problem ever existed, so no progress was possible no matter what efforts DCS made.

In re Jeremy D., No. 01A01-9510-JV-00479, 1996 Tenn. App. LEXIS 292 (Tenn. Ct. App. May 17, 1996). Middle Section affirmed the termination of parental rights. One of the issues presented by the mother on appeal was that DHS did not prove that it made reasonable efforts to reunite her with her children. The Court held that DHS must make reasonable efforts to preserve the family prior to seeking a termination of parental rights. However, DHS does not have to present proof at the termination of parental rights hearing detailing the nature and duration of services nor does the trial court have to make specific findings concerning the adequacy of the services. The Court held that the trial court must consider the Department's efforts to help a parent improve his or her circumstances as prescribed by T.C.A. §37-1-147(e)(2), (now T.C.A. § 36-1-113(i)), which requires courts to determine, "whether the parent has failed to effect a lasting adjustment after reasonable efforts by available social agencies for such duration of time that lasting adjustment does not reasonably appear possible."

See also:

Tennessee Dep't of Human Services v. Riley, 689 S.W. 2d 164 (Tenn. Ct. App. 1984).

In re C.LaC., No. M2003-02164-COA-R3-PT , 2004 Tenn. App. LEXIS 172, (Tenn. Ct. App. March 17, 2004.)

State Dep't of Children's Servs. v. L.L.T., No. E2003-00501-COA-R3-JV, 2003 Tenn. App. LEXIS 955, (Tenn. Ct. App. December 30, 2003).

Department of Children's Servs. v. Malone, No. 03A01-9706-JV- 00224, 1998 Tenn. App. LEXIS 83 (Tenn. Ct. App. February 5, 1998).

In re Fillingier, No. 02A01-9409-JV-00223, 1996 Tenn. App. LEXIS 301 (Tenn Ct. App. May 22, 1996).

Department of Human Services v. Curran, No. 01A01-9310-CV-00435, 1994 Tenn. App. LEXIS 74 (Tenn. Ct. App. February 18, 1994).

Department of Children's Services v. Conaster, No. 1, 1990 Tenn. App. LEXIS 113 (Tenn. Ct. App. February 23, 1990).

Department of Human Services v. Amundsen, No. 87-100-II, 1987 Tenn. App. LEXIS 2990 (Tenn. Ct. App. October 14, 1987).

Lee v. Holder, No. 84-152-II, 1985 Tenn. App. LEXIS 3417 (Tenn. Ct. App. August 20, 1985).

Department of Human Services v. Caldwell, No.82-251-11 (Tenn. Ct. App., M.S. May 16, 1983).

Department of Human Services v. Gilbert, 7 TAM 25-18, (Tenn. Ct. App., E.S. April 29, 1982).

4.01 (c) Reasonable Efforts Toward Other Permanency Goals

Department of Children's Services v. Moss, No. 01A01-9708-JV-00424, 1998 Tenn. App. LEXIS 200 (Tenn. Ct. App. March 20, 1998). Western Section affirmed judgment of the trial court terminating father's parental rights. **The Court of Appeals held that DCS made reasonable efforts to place the children with a relative.**

See also:

In re Adoption of A.K.S.R., 71 S.W.3d 715 (Tenn. Ct. App. 2001) regarding preference of foster parent vs. relative in termination of parental rights and adoption proceeding.

State Dep't of Children's Servs. v. F. E. B., No. E2001-00942-COA-R3-JV, 2003 Tenn. App. LEXIS 121 (Tenn. Ct. App. February 12, 2003). Issue not raised at trial of termination of parental rights.

In re S.B., No. M1999-00140-COA-R3-CV, 2000 Tenn. App. LEXIS 308 (Tenn. Ct. App. May 12, 2000).

4.02 Severe Child Abuse

Nash-Putnam v. McCloud, 921 S.W.2d 170 (Tenn. 1996). **A mother's failure to protect her child from severe physical abuse by the father constituted "substantial harm" sufficient to terminate mother's parental rights in this case.** The Supreme Court found that the mother was guilty of severe child abuse and sentenced to more than 2 years imprisonment. The Supreme Court rejected her contention that T.C.A. § 37-1-147(d)(2) was only meant to apply to the actual abuser: **"Allowing a child to be abused is egregious abuse."** *Id.* at 176. (Emphasis added.)

In re H.E.J., 124 S.W.3d 110 (Tenn. Ct. App. 2003). Permission to appeal denied. Trial court terminated the father's parental rights of his twin girls on numerous grounds including severe child abuse. The trial court held that the father, who was also the stepfather of the child's mother, committed incest of the children's mother. The father argued that this ground was inapplicable because there was no evidence he ever abused the twins. Court of Appeals agreed there was no evidence of abuse of the twins but there was clear and convincing evidence he abused his stepdaughter, the children's mother. Father also argued there was no corroboration of the mother's testimony and if he abused the mother it was not during the lifetime of the twins and did not meet the requirements of T.C.A. § 36-1-113(g)(4). The Court held both issues were without merit and affirmed the trial court's termination of the father's parental rights.

In re M.W.A., 980 S.W.2d 620 (Tenn. Ct. App. 1998). **The stepfather severely abused his twelve year old stepson, both physically and emotionally.** The Middle Section affirmed the decision of the juvenile court terminating the parental rights of the father for severe child abuse and both parents for persistence of conditions. The mother physically abused the very young children by beating the children with a wooden branch at the day care. Parents were from abusive families. They had little education and borderline intellectual functioning. The children suffered from severe developmental delays. Three boys, ages two to four, had not developed any verbal skills and communicated by hand gestures and single syllables. They had not learned to walk.

Department of Human Servs. v. Purcell, 955 S.W.2d 607 (Tenn. Ct. App. 1997). **The acts of the mother constituted severe child abuse which established a ground for termination of parental rights.** The trial court found "by clear and convincing evidence that prior to incarceration, the mother, engaged in conduct exhibiting a wanton disregard for the welfare of the children and that she had committed severe child abuse by sexually abusing the children." *Id.* at 608. The Court of Appeals found "the evidence sufficient to establish 'severe child abuse' and wanton disregard for the welfare of the children sufficient to constitute 'abandonment' as those terms are defined in T.C.A. §§ 37-1-101(b)(19)(A) and (B) and 37-1-102(b)(1)(B)(I) respectively." *Id.* at 609. The court pointed out that the mother was serving a sentence of twenty years for the murder of the children's father that occurred as a violent multiple shooting in the presence of at least one of the children.

Department of Human Servs. v. Hauck, 872 S.W.2d 916 (Tenn. Ct. App. 1993). Permission to appeal denied. **Total neglect of the child's welfare may constitute severe child abuse.** On the issue of defendant's responsibility for severe abuse of a sibling, the trial court found that there was not clear and convincing proof that defendant injured the child, but it was clear that he failed to obtain medical attention which constituted severe child abuse by utter and total neglect of the child's welfare." *Id.* at 921. The Court of Appeals agreed with the trial court's conclusion.

In re R.C.P., No. M2003-01143-COA-R3-PT, 2004 Tenn. App. LEXIS 449 (Tenn. Ct. App. July 13, 2004). Mother appealed the termination of her parental rights based on the ground of severe child abuse in that she failed to protect the child from severe the sexual abuse of the mother's paramour. Middle Section affirmed the termination. In reaching its decision the Court discussed the terms "knowing" and "knowingly." The Court concluded that the juvenile court erred in applying the criminal definition of "knowing" and "knowingly" to determine if the mother had severely abused her child pursuant to T.C.A. § 37-1-102(b)(21). Instead the Court utilized **the words' natural and ordinary meaning "constru(ing) them in the context of the entire statute and the statute's general purpose.** *Id.* at *24. In doing so the Court defined "knowing" and "knowingly" in the context of T.C.A. § 37-1-102(b)(21) as: **1) "actual knowledge of the relevant facts and circumstances" or 2) "deliberate ignorance of or in reckless disregard of the information that has been presented."** *Id.* at *25. Thus a parent need not have been present when the severe abuse occurs to meet the "knowing" requirement. The "knowing" requirement will also be met if there is proof that the **"parent had been presented with sufficient facts from which the parent could have and should have recognized that severe child abuse had occurred or that it was highly probable that severe child abuse would occur.** *West Va. Dep't of Health & Human Res. Ex rel. Wright v. Doris S.* 475 S.E.2d at 878-879." *Id.* at *26.

Tenn. Dep't of Children's Servs. v. Hoffmeyer, No. M2002-00076-COA-R3-JV, 2003 Tenn. App. LEXIS 205 (Tenn. Ct. App. March 13, 2003). In the termination of parental rights proceeding the trial judge treated the order of a prior hearing as *res judicata* as to the finding of severe child abuse and terminated the parents' parental rights. **The Middle Section held the previous order was not a "final order" as to the issue of severe child abuse.** The Court found "(s)ince the November 30, 1999 Order lacks the required designation and the necessary findings of the court to effect finality as to the severe child abuse issue, the Order is interlocutory in nature and thus is not a final determination supporting the application of the *res judicata* bar." *Id.* at *21. The Court found the order was not a "disposition" pursuant to T.C.A. § 37-1-159(a) or Rule 36 of the Rules of Juvenile Procedure. *Id.* at *25. (Editor's Note: see concurring opinion by Cottrell.)

In re S.M.C., No. 01A01-9807-JV-00358, 1999 Tenn. App. LEXIS 365 (Tenn. Ct. App. June 11, 1999). Parental rights were terminated on numerous grounds including severe child abuse pursuant to T.C.A. § 37-1-102(b)(21)(B). The trial court found that **the parents' abuse of one child resulted in severe developmental delay and severe impairment of her ability to function adequately in her environment.** Western Section affirmed termination of parental rights.

Department of Children's Servs. v. Galvin, No. 03A01-9807-CV-00233, 1999 Tenn. App. LEXIS 257 (Tenn. Ct. App. April 16, 1999). Permission to appeal denied, 1999 Tenn. LEXIS 445. Eastern Section reversed and remanded the judgment of the circuit court. The circuit court dismissed the termination of parental rights petition finding that there was not clear and convincing evidence of severe child abuse, failure to comply with the permanency plan or persistence of conditions. At the termination hearing, the prior order of the juvenile court finding severe child abuse and the criminal conviction of the father for aggravated assault (reduced from attempted aggravated rape) were introduced by DCS. The circuit court found that the "guilty plea was understandable given the circumstances . . . [and] "did not mean Mr. Galvin was guilty." *Id.* at 6. The circuit court also found that there was insufficient proof of severe child abuse under any prior court order or in the termination hearing. The Court of Appeals found clear and convincing evidence of severe child abuse and persistence of conditions. **The Court held that two courts (juvenile and criminal) found the father guilty of severe child abuse and the orders were res judicata as to the issue of severe child abuse.**

Department of Children's Services v. N.A.A., No. 01A01-9709-JV-00476, 1998 Tenn. App. LEXIS 693 (Tenn. Ct. App. October 16, 1998). **Parental rights were terminated based on severe child abuse of**

niece who died in the home. Middle Section affirmed termination of parental rights. Four children, ages 7 to 13 years, were removed from their parents and placed in custody of the Department of Children's Services after the two year old niece died in the home of multiple blunt trauma to the head. The mother was found guilty of criminally negligent homicide. The Court of Appeals opined that the mother could not collaterally attack the criminal conviction in the termination proceeding.

Department of Children's Servs. v. Sipe (In re Sipe), No. 01A01-9704-JV-00185, 1998 Tenn. App. LEXIS 178 (Tenn. Ct. App. March 6, 1998). **Record supported finding under T.C.A. § 36-1-114(g)(4) of severe abuse of child or sibling.** In addition, father could not accept diagnosis and severity of mental illness (bipolar disorder). Mother could not protect child, who had special needs. Little likelihood that conditions would be remedied.

4.03 Failure to Protect

Nash-Putnam v. McCloud, 921 S.W.2d 170 (Tenn. 1996). **Failure to protect a child from abuse can constitute "substantial harm" sufficient to constitute dependency and neglect.**

State v. NFGWP, No. E2001-01996-COA-R3-CV, 2002 Tenn. App. LEXIS 550 (Tenn. Ct. App. July 29, 2002). Eastern Section affirmed the judgment of the trial court terminating the mother's parental rights. The Court held **"the mother was never willing to admit the abuse happened, and would not take responsibility for failing to protect the children."** *Id.* at *6.

Department of Children's Servs. v. Malone, No. 03A01-9706-JV-00224, 1998 Tenn. App. LEXIS 83 (Tenn. Ct. App. February 5, 1998). Permission to appeal denied, 1998 Tenn. LEXIS 382. **There was evidence that mother cohabited with man who sexually abused mother's third child, justifying termination of rights to all three children who could not be protected from him.**

Farmer v. Department of Children Servs., 1997 Tenn. App. LEXIS 938, No. 01A01-9610-JV-00485, (Tenn. Ct. App. December 30, 1997). In this consolidated appeal, the Court of Appeals found one **mother demonstrated "either an inability to come to grips with the obvious effects of the sexual abuse perpetrated on her children by her brothers or if recognizing such to exist and (sic) inability to protect the children from continued abuse."** *Id.* at *23. (Emphasis added.) Middle Section affirmed judgment of juvenile court terminating the parental rights of parents of two sets of children living in the same home when the children were removed. One mother made efforts to comply with plan of care but her low level of functioning and attachments to her family rendered it unlikely that she would be able to protect her children from sexual abuse and function as a caregiver for them.

See also *Department of Children's Servs. v. Sipe (In re Sipe)*, No. 01A01-9704- JV-00185, 1998 Tenn. App. LEXIS 178 (Tenn. Ct. App. March 6, 1998).

4.04 Sexual Abuse

In re T.H., No. 01A01-9412-JV-00600, 1996 Tenn. App. LEXIS 218 (Tenn. Ct. App. April 10, 1996). **Middle Section upheld termination of father's parental rights based on the fact that he sexually abused his four daughters and stepdaughter.** The trial court made a finding of severe child abuse as a result of the sexual abuse. Father was convicted of nine counts of aggravated rape and rape and sentenced to 100 years. Father raised the issue of the admissibility of his convictions at the termination of parental

rights hearing because they were on appeal. The Court of Appeals held that, pursuant to T.R.E. 803(22), the pendency of an appeal goes to the weight of the evidence but not the admissibility of the conviction.

State Dep't of Human Servs. v. Tate, No. 01A01-9409-CV-00444, 1995 Tenn. App. LEXIS 204 (Tenn. Ct. App. March 31, 1995). **Parents' rights were terminated on the ground of severe child abuse based, in part, on both parents' sexual abuse of a daughter.** Middle Section affirmed judgment of the trial court terminating parental rights and mother appealed. One issue raised on appeal was whether the mother committed severe child abuse against the other children. The Court of Appeals found that she committed severe child abuse by exposing the other children to the father's sexual abuse of their daughter and took no action to protect them. In addition, the Court found that the mother physically abused the children and failed to seek medical treatment for severe burns of one child that required surgery.

See also:

Department of Human Servs. v. Purcell, 955 S.W.2d 607 (Tenn. Ct. App. 1997).

In re S.M.C. and J.L.C., No.01A01-9807-JV-00358, 1999 Tenn. App. LEXIS 365 (Tenn. Ct. App. June 11, 1999).

Department of Children's Servs. v. Galvin, No. 03A01-9807-CV-00233, 1999 Tenn. App. LEXIS 257 (Tenn. Ct. App. April 16, 1999). Permission to appeal denied, 1999 Tenn. LEXIS 445.

In re S.M.L., et al. v. C.L.H., 01A01-9710-JV-00596, 1998 Tenn. App. LEXIS 376 (Tenn. Ct. App. June 12, 1998). Permission for rehearing denied, 1998 Tenn. App. LEXIS 432.

Farmer v. Department of Children Servs., No. 01A01-9610-JV-00485, 1997 Tenn. App. LEXIS 938 (Tenn. Ct. App. December 30, 1997).

4.05 Failure to Obtain Medical Treatment

In re Hamilton, 657 S.W.2d 425 (Tenn. Ct. App. 1983). **The Eastern Section modified and affirmed Juvenile Court judgment that the child is dependent where the parent who, because of religious views, refused to provide necessary medical care to 12 year old daughter, suffering from Ewing's Sarcoma.** The modification authorized DHS Director to consent to child's medical treatment but otherwise accede to parents' religious beliefs not in conflict with recommended medical treatment.

See also *Department of Human Servs. v. Hauck*, 872 S.W.2d 916 (Tenn. Ct. App. 1993). Permission to appeal denied.

4.06 Mental Illness/Deficiency of Parent

State, Dep't of Human Services v. Smith, 785 S.W.2d 336 (Tenn. 1990). **There is no violation of due process in terminating parental rights of a mentally ill parent.** Child was removed from home on complaints of abuse and truancy. There was no evidence of physical abuse, but mother exhibited bizarre behavior. A foster care plan ratified by the court included a requirement that the parents undergo evaluation and psychiatric treatment. Mother was diagnosed paranoid schizophrenic. She would not take medication. Father refused to acknowledge her diagnosis and allowed her to be dominant figure in home. Several months after child's placement in foster care, DHS sought to terminate parental rights, because the parents were not following foster care plan requirements. The Chancellor terminated the Smith's parental rights, but the Court of Appeals vacated and remanded because the Smiths were not competent to represent themselves. Counsel and a guardian ad litem were appointed on remand. At the rehearing the chancellor again terminated parental rights. The Court of Appeals reversed the termination order because Mrs. Smith's conduct, as a result of mental illness, was not willful.

The Supreme Court reversed, noting that the Court of Appeals decision lacked support in either the controlling statutes or the case law of this or other jurisdictions. The Supreme Court stated “the Court of Appeals is not in accord with prior decisions of that court in *State Department of Human Services v. Ogle*, 617 S.W.2d 652 (Tenn. App. 1980), and in *Tennessee Department of Human Services v. Riley*, 689 S.W.2d 164 (Tenn. App. 1984).” 785 S.W.2d, at 338. There is no violation of due process in terminating parental rights of a mentally ill parent. The state’s procedures place the children’s welfare first, by requiring return to the parents whenever possible, but allow change of custody when the conditions leading to removal persist, “and are not likely to ever change.” 785 S.W.2d, at 337.

In re A.W., 114 S.W.3d 541, (Tenn. Ct. App. 2003). On appeal of the mother’s termination of her parental rights, one issue she raised is that she had substantially complied with the requirements of the permanency plans. The Court of Appeals **found the mother had substantially corrected all but one of the conditions** existing in the home at the time of removal. The remaining condition was the mother’s mental illness that could only be treated with medication. **The trial court acknowledged the mother had made a “dramatic improvement” since she began taking the medication after the termination proceeding was initiated; however the court found the improvement came “too little, too late.”** *Id.* at 546. The Court of Appeals affirmed the termination.

In re M.W.A., 980 S.W.2d 620 (Tenn. Ct. App. 1998). The Court found that “**(t)he parents’ lack of progress in improving their parenting abilities is exacerbated by their steadfast refusal to recognize their own shortcomings. They continue to insist on downplaying their children’s lack of language skills by saying that they are simply developing language of their own.**” *Id.* at 623. (Emphasis added.)

State Dep’t of Human Servs. v. Defriece, 937 S.W. 2d 954 (Tenn. Ct. App. 1996). Permission to appeal denied. **The Eastern Section could not find clear and convincing evidence that the statutory requirements were met so as to justify termination of parental rights.** Case involved four minor children, found to be neglected and dependent, and placed in DHS custody and foster care because of mother’s drug and alcohol abuse and related behavior. Foster parents of one child sought custody of that child and his sister, and to terminate parental rights as to those two children. The Court found that there was some evidence of mother’s efforts toward improvement as she had attended counseling sessions; completed parenting classes; completed a Vocational Rehabilitation program; obtained full-time employment; was in a “more stable” relationship; and, after the children’s placement in foster care, there were no further allegations of drug or alcohol abuse by mother.

Department of Human Servs. v. Norton, 928 S.W.2d 445 (Tenn. Ct. App. 1996). Permission to appeal denied. **The parents’ emotional and mental limitations prevented them from being able to care for special needs children.** The Eastern Section affirmed Greene County Juvenile Court’s termination of parental rights of both parents. The parents’ appeal asserted there was not clear and convincing evidence to support the termination.

The children had been removed from their parents’ custody for more than two years at the time of trial. The trial court found that neither of the parents ever demonstrated the ability to understand or deal with the special needs of the children, and that they consistently failed to accept any responsibility for their situation. Reference was made to parents’ poor hygiene and refusal of efforts to show them how to improve. **The children were neglected and in need of special treatment and counseling which the parents either would not or could not provide. “The evidence is clear that these parents cannot properly care for these children, taking into account their own emotional and mental state as well as that of the children.”** *Id.* at 447. (Emphasis added.) The parents demonstrated through their inability or refusal to cooperate with the foster care plan that there was little likelihood that conditions would soon be remedied, and it was also found that continuing foster care diminished the likelihood of a successful

adoption. The parents' circumstances are pitiable, but it is clearly in the best interest of the children that the relationship be terminated." *Id.*

***Drinnon v. Brown, (In re Drinnon)*, 776 S.W. 2d 96 (Tenn. Ct. App. 1988). Termination of parental rights was vacated because the mother substantially complied with the foster care plan.** Eastern Section reversed termination of parental rights and order of adoption holding that the chancellor, "based his final decision on the relative merits of the [parties]." *Id.* at 100. The mother complied with the foster care plan by improving her parenting, homemaking and budgeting skills such that she could adequately care for and support the children. Although the mother's progress was gradual, she made sufficient improvement, despite her mental limitations, to warrant return of the oldest child.

The Court of Appeals stated:

That the foster parents have a home which can offer more in terms of material things and quality of life is undisputed. That they are also intelligent and can aid the children in school is evident. But, those advantages are not the question, nor is custody the question. The issue is much more permanent: It's whether you sever the blood relationship---the symbolic umbilical cord between mother and child. *Id.* at 100.

***Dep't of Children's Servs. v. C.L.*, No. M2001-02729-COA-R3-JV, 2003 Tenn. App. LEXIS 606 (Tenn. Ct. App. August 29, 2003).** Parents appealed the termination of their parental rights to nine children. One issue on appeal was whether DCS proved by clear and convincing evidence that the parents failed to substantially comply with the permanency plan. One requirement of the plan was that the mother complete a psychological evaluation and follow recommendations. **The Court held she complied with the evaluation but DCS did not prove she was aware that counseling was recommended and failed to inform her of the same; and the agency providing counseling did not find a diagnosis to justify treatment.**

***State Dep't of Children's Servs. v. R.M.M.*, No. E2001-02678-COA-R3-JV, 2002 Tenn. App. LEXIS 679, (Tenn. Ct. App. September 23, 2002).** Eastern Section held DCS failed to prove by clear and convincing evidence the father's mental condition was so impaired that he would not be able to resume the care and responsibility of the child. A clinical psychologist testified on behalf of DCS that the father probably would not continue to take medication if the child was returned. The Court found that that contingency alone was not sufficient to warrant termination of parental rights. The termination was reversed and remanded.

***State Dep't of Children's Servs. v. Whaley*, No. E2001-00765-COA-R3-CV, 2002 Tenn. App. LEXIS 383 (Tenn. Ct. App. May 30, 2002).** Eastern Section reversed the termination of the parental rights of mother because DCS failed to prove the mother who was diagnosed as mildly mentally retarded was incompetent to such a degree that she was unable to care for her child presently or would be unable to in the future.

***In re T.J.H.*, No. 01A01-9712-CH-00736, 1998 Tenn. App. LEXIS 371 (Tenn. Ct. App. June 12, 1998).** The Middle Section affirmed termination of the parental rights of two mentally ill parents whose conditions were unlikely to improve because of their inability to manage their psychological disorders and noncompliance with medication. Expert testimony supported the conclusion of a substantial threat of harm to the children if the relationship continued.

***Department of Human Servs. v. Kersey*, No. 03A01-9507-JV-00211, 1996 Tenn. App. LEXIS 326 (Tenn. Ct. App. May 28, 1996.) An alcoholic parent is not, *per se*, an unfit parent.** Western Section

reversed and remanded the judgment of the juvenile court terminating parental rights. The Court of Appeals held that there was not clear and convincing evidence of persistence of conditions, substantial noncompliance with the foster care plan or that it would be in the children's best interest to terminate parental rights. Both parents had serious drinking problems and both had been arrested on numerous occasions for driving under the influence or public drunkenness. The children were taken into care when their mother was arrested for driving under the influence and the four children were in the car with her. The Court stated: "we recognize that alcoholism is a very serious disease; however, we are not willing to find that an alcoholic parent is, *per se*, an unfit parent. Thus, while alcoholism itself does not provide a statutory basis for termination of parental rights, the potential effects of a parent's alcoholism, such as neglect or abuse, may provide grounds for termination." *Id.* at *12-13. The Court found that the State failed to establish that the parents were "consistently unable to care for their children due to their alcoholism. We are also unable to conclude, based on the efforts the Kerseys have made to overcome their alcohol addiction, that a lasting adjustment is 'not reasonably possible.'" *Id.* at *17-18.

See also:

Tennessee Dep't of Human Services v. Riley, 689 S.W. 2d 164 (Tenn. Ct. App. 1984).

State Dep't of Human Services v. Ogle, 617 S.W.2d 652 (Tenn. Ct. App. 1980).

In re M.E.W., No. M2003-01739-COA-R3-PT, 2004 Tenn. App. LEXIS 250 (Tenn. Ct. App. April 21, 2004).

In re B.B., No. M1999-00643-COA-R3-CV, 2000 Tenn. App. LEXIS 399 (Tenn. Ct. App. June 20, 2000) Permission to appeal denied December 18, 2000.

In The Matter of T.S., No. M1999-01286-COA-R3-CV, 2000 Tenn. App. LEXIS 451 (Tenn. Ct. App. July 13, 2000)

Department of Children's Servs. v. Sipe (In re Sipe), No. 01A01-9704-JV-00185, 1998 Tenn. App. LEXIS 178 (Tenn. Ct. App. March 6, 1998).

Farmer v. Department of Children Servs., No. 01A01-9610-JV-00485, 1997 Tenn. App. LEXIS 938 (Tenn. Ct. App. December 30, 1997).

4.07 Substantial Noncompliance with Permanency Plan

***In re Valentine*, 79 S.W.3d 539 (Tenn. 2002). Supreme Court held TCA 37-2-403(a)(2)(C) requires the trial court at the termination of parental rights hearing find the terms of the permanency plan were reasonable and related to remedying the conditions that necessitate foster care placement in conjunction with the determination of substantial noncompliance of the permanency plan. The conditions that necessitate foster care placement include conditions related to both the child's removal and to family reunification.** The Court reversed the termination of parental rights and remanded the case to the juvenile court.

Child was placed in foster care because of physical abuse by his mother. The permanency plans required the mother attend parenting classes, vocational classes or obtain a GED, and individual counseling; maintain stable housing and supervised visitation; and complete a neuropsychiatric evaluation. The trial court found the mother failed to attend parenting classes; participate in vocational classes or obtain a GED; maintain stable housing or a supervised visitation schedule. There was no finding regarding the counseling or neuropsychiatric evaluation. The Supreme Court held the mother complied with the requirements of attending parenting classes and maintaining housing; partially complied with maintaining supervised visitation; and was obtaining some counseling. The Supreme Court stated, "(t)he record contains no evidence even remotely suggesting that the abuse of Oliver by Ms. Wallace was related to her lack of vocational training or a GED. Similarly, there was no proof that attending vocational classes or obtaining a GED was related to returning Oliver to Ms. Wallace's care." *Id.* at 547.

In reviewing “substantial compliance” with the permanency plan the Court found that:

In the context of the requirements of the permanency plan, the real worth and importance of noncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement. Terms not reasonable and related are irrelevant, and substantial noncompliance with such terms is irrelevant. *Id.* at 548-9.

The Supreme Court found an order approving the permanency plan is not a final order. The Court also found that a parent’s improvement towards compliance of the permanency plan should be considered in a parent’s favor.

In re A.W., 114 S.W.3d 541, (Tenn. Ct. App. 2003). On appeal of the mother’s termination of her parental rights, one issue she raised is that she had substantially complied with the requirements of the permanency plans. The Court of Appeals **found the mother had substantially corrected all but one of the conditions** existing in the home at the time of removal. The remaining condition was the mother’s mental illness that could only be treated with medication. **The trial court acknowledged the mother had made a “dramatic improvement” since she began taking the medication after the termination proceeding was initiated; however the court found the improvement came “too little, too late.”** *Id.* at 546. The Court of Appeals affirmed the termination.

V.D. v. N.M.B., No. M2003-00186-COA-R3-CV, 2004 Tenn. App. LEXIS 465, (Tenn. Ct. App. July 26, 2004). The child was placed in the custody of the paternal grandmother who subsequently filed a petition to terminate parental rights. Mother appealed the terminating her parental rights. One issue on appeal was whether there was clear and convincing proof as to the ground of non-compliance with the permanency plan. **The Middle Section found the child was never placed and foster care and nothing in the record suggested a permanency plan meeting the statutory requirements ever existed. Though the mother failed to comply with previous court orders regarding education and employment, those orders did not constitute a permanency plan and non-compliance did not satisfy this specific statutory ground for termination.**

Dep’t of Children’s Servs. v. C. L. No. M2001-02729-COA-R3-JV, 2003 Tenn. App. LEXIS 606 (Tenn. Ct. App. August 29, 2003). Parents appealed the termination of their parental rights to nine children. One issue on appeal was whether DCS proved by clear and convincing evidence that the parents failed to substantially comply with the permanency plan. In applying the standards for review to a termination of parental rights based on TCA § 36-1-113(g)(2), as stated in *In re Valentine*, 79 S.W.3d 539 (Tenn. 2002), the Middle Section **held the trial court must find the permanency plan requirements the parent did not fulfill were specific, reasonable, and related to remedying the conditions which necessitate foster care placement pursuant to TCA § 37-2-403(a)(2)(C). The finding must be made in conjunction with the ruling of noncompliance by the parent. Should the trial court fail to make this finding, the appellate court must review the decision of the trial court *de novo* without a presumption of correctness. In addition, review of whether the parent failed to substantially comply is a question of law that also must be reviewed without a presumption of correctness.**

DCS alleged the father did not comply with the requirement of securing a safe environment for the children and asserted he failed to substantially comply because he jeopardized his housing by allowing the mother to live with him when her name was not on the lease. The Court held the evidence failed to support DCS’s position.

As to the mother, the Court found the trial court made the specific findings required as to only two of the requirements, child support and visitation, and only those findings would be reviewed with a presumption

of correctness. The Court held the evidence preponderated against both findings that there was substantial non-compliance. The Court found the requirement to provide adequate housing as it was interpreted by DCS during its involvement with the family lacked the required specificity, therefore the mother could not be found to have failed to “substantially comply with a specific requirement of the Plan regarding housing.” *Id.* at *69. The Court held the requirement of a GED was not related to the conditions of the removal. Though the mother attended parenting classes, DCS was not satisfied she could demonstrate sufficient improvement in her parenting skills. The Court found the mother complied with the “specific” requirement to attend parenting classes. *Id.* at *70. Mother was required to have a psychological evaluation and follow recommendations. The Court held she complied with the evaluation but DCS did not prove she was aware that counseling was recommended and failed to inform her of the same; and the agency providing counseling did not find a diagnosis to justify treatment. The Court reversed and remanded the termination on this and other grounds.

In re D.M., No. M2002-01317-COA-R3-JV, 2003 Tenn. App. LEXIS 135 (Tenn. Ct. App. February 20, 2003). **Middle Section held DCS failed to prove substantial noncompliance by the mother with the permanency plan by clear and convincing evidence.** The mother was a minor when she gave birth to both children. She was placed in foster care before the birth of her second child. Upon turning 18 years old, the mother was released from custody and entered the Army. Both children remained in custody. The mother signed three permanency plans for each of the children. Her responsibilities were to complete parenting classes, submit to random drug screens, regular visitation, weekly telephone contact with DCS, provide a safe and stable home, and pay child support “as ordered by the court.” The Court found the mother made “substantial progress” before and after she was in foster care. She earned a GED; held gainful employment; enlisted in the Army; made an effort to maintain contact with her children; enrolled in parenting classes; made an effort to acquire housing for the children while in the Army and to qualify for special educational benefits. *Id.* at *11-12.

In re T.K.C., No. W2001-03017-COA-R3-JV, 2002 Tenn. App. LEXIS 937 (Tenn. Ct. App. December 30, 2002). The mother appealed the judgment to terminate her parental rights. One issue on appeal was whether there was clear and convincing evidence that she failed to substantially comply with the responsibilities of the permanency plan. The mother had made progress in complying with the plan subsequent to the filing of the petition to terminate parental rights. The Western Section **held that based on the mother’s “propensity for recidivism” during the children’s entire period in foster care substantial compliance with the permanency plan would require more than just attending classes and counseling. In this case, substantial compliance would require proof that she could apply “parenting skills in the stressful context of day-to-day life with five active children” and that she be “able to maintain sobriety for a substantial period of time.”** *Id.* at *46.

State Dep’t of Children’s Servs. v. B.J.A.L., No. E2002-00292-COA-R3-JV, 2002 Tenn. App. LEXIS 674 (Tenn. Ct. App. September 19, 2002). **Eastern Section held the evidence preponderated against the trial court’s finding of substantial non-compliance with the permanency plan.** The Court found that partial failure to complete two of six requirements of the permanency plan did not amount to substantial non-compliance with the plan. The termination of parental rights was affirmed on other grounds.

In re D.D.V., No. M2001-02282-COA-R3-JV, 2002 Tenn. App. LEXIS 126 (Tenn. Ct. App. February 14, 2002). Middle Section reversed the trial court’s order terminating the parental rights of the mother because the grounds of abandonment, nonsubstantial compliance with the permanency plan and persistence of conditions were not proven by clear and convincing evidence. The Court held the mother complied with most of the responsibilities on the permanency plan, except for obtaining a stable home.

The Court held “the Department did not make reasonable efforts to help her meet this requirement, so we cannot place the blame for this failure entirely upon her.” *Id.* at *26.

State v. D. S., No. M2000-02380-COA-R3-JV, 2001 Tenn. App. LEXIS 340 (Tenn. Ct. App. May 9, 2001). **Middle Section reversed termination of parental rights because of lack of clear and convincing evidence of persistence of conditions and failure to comply with the permanency plan.** The plan was not admitted into evidence at the hearing.

State Dep't of Children's Servs., No. 01A01-9806-JV-00275, 1998 Tenn. App. LEXIS 817 (Tenn. Ct. App. December 3, 1998). Petition to appeal denied. Eastern Section found that the **State's burden to show, by clear and convincing evidence, that the mother did not substantially comply with the plan of care was not met.** The Court of Appeals reversed the judgment of the trial court terminating the mother's parental rights and returned custody to the mother.

Department of Children's Servs. v. Epps (In re Dave), No. 03A01-9710-JV-00485, 1998 Tenn. App. LEXIS 297 (Tenn. Ct. App. April 30, 1998). **Mother attended parenting classes and received counseling, but was still unable to provide for children's needs.** Eastern Section affirmed termination of mother's parental rights. Children, all under 7 years, were found alone in apartment to which mother had not returned in at least two days. DHS obtained temporary custody. Mother took parenting classes and received counseling. Physical custody of the children was returned to the mother who was still unable to provide for their needs and the children were returned to foster care. Visitation thereafter was erratic and the children were not well cared for when they stayed with mother. The mother displayed a lack of interest in returned custody.

See also:

Stokes v. Arnold, 27 S.W.3d 516 (Tenn. Ct. App. 2000).

In re M.W.A., 980 S.W.2d 620 (Tenn. Ct. App. 1998).

State Dep't of Human Servs. v. Defriece, 937 S.W. 2d 954 (Tenn. Ct. App. 1996).

Department of Human Servs. v. Norton, 928 S.W.2d 445 (Tenn. Ct. App. 1996). Permission to appeal denied.

Drinnon v. Brown, (In re Drinnon), 776 S.W. 2d 96 (Tenn. Ct. App. 1988).

Tennessee Dep't of Human Services v. Riley, 689 S.W. 2d 164 (Tenn. Ct. App. 1984).

In re Z.J.S., No. M2002-02235-COA-R3-JV, 2003 Tenn. App. LEXIS 415 (Tenn. Ct. App. June 3, 2003).

Department of Children's Servs. v. Galvin, No. 03A01-9807-CV-00233, 1999 Tenn. App. LEXIS 257 (Tenn. Ct. App. April 16, 1999). Permission to appeal denied, 1999 Tenn. LEXIS 445.

Department of Children's Servs. v. Bottoms, No. 01A01-9706-JV-00249, 1998 Tenn. App. LEXIS 197 (Tenn. Ct. App. March 20, 1998).

Farmer v. Department of Children Servs., No. 01A01-9610-JV-00485, 1997 Tenn. App. LEXIS 938 (Tenn. Ct. App. December 30, 1997).

Department of Human Servs. v. Manier, No. 01A01-9703-JV-00116, 1997 Tenn. App. LEXIS 755 (Tenn. Ct. App. October 31, 1997).

Department of Children Servs. v. Taylor, No. 01A01-9610-CV-00472, 1997 Tenn. App. LEXIS 128 (Tenn. Ct. App. February 26, 1997).

4.08 Persistence of Conditions

In re Valentine, 79 S.W.3d 539 (Tenn. 2002). **Supreme Court held all three factors of T.C.A. 36-1-113(g)(3) must be proven by clear and convincing evidence in order to terminate parental rights.**

The Court held the burden of persuasion rests with the party seeking to terminate parental rights. The Court found DCS failed to prove by clear and convincing evidence that the condition that led to removal persisted, specifically that the mother had not learned to control her temper. It also noted the trial court seemed more concerned with the father who resided in the home and had a history of domestic violence against the mother. There was no evidence the father had abused the child or that his prior abuse of the mother affected her relationship with or the parenting of the child.

In re C.D.B., 37 S.W.3d 925; (Tenn. Ct. App.2000). Permission to appeal denied. **Issue on appeal was whether the trial court erred in terminating the mother's parental rights on the ground of persistence of conditions because she had custody and care of a child born subsequent to DCS removing the children who are the subjects of the termination proceeding.** In citing, *In re Baker*, 1999 Tenn. App. LEXIS 870, 1999 WL 1336044 (Tenn. Ct. App. 1999), the Court of Appeals held the two sets of children were not necessarily the same and each situation was independent of the other.

In re M.E., No. M2003-00859-COA-R3-PT, 2004 Tenn. App. LEXIS 526 (Tenn. Ct. App. August 16, 2004). A **termination proceeding based on the persistence of conditions ground, pursuant to T.C.A. 36-1-113(g)(3), requires DCS to demonstrate by clear and convincing evidence that reasonable efforts have been made to reunify the child and parent.** The record reflected that DCS had provided numerous services to the mother, yet failed to provide **the most obvious and essential** service that the mother needed. Specifically, DCS failed to provide the services recommended from a mental health evaluation. The Court opined that failure to provide the recommended psychological therapy to the mother rendered the services that had been provided **"a waste of time and money."** *Id.* at 24. Middle Section reversed the decision of the juvenile to court to terminate the mother parental rights finding that DCS had not made reasonable efforts to reunify the children with their mother.

In re B.B., No. M2003-01234-COA-R3-PT, 2004 Tenn. App. LEXIS 363 (Tenn. Ct. App. June 9, 2004). Trial court terminated mother's parental rights based on persistence of conditions. Middle Section reversed holding that **DCS failed to prove by clear and convincing evidence** that conditions exist that in all reasonable probability would subject the children to further neglect and prevent their safe return home and **"that any conditions preventing the children's return could not be remedied with sufficient training, support, and assistance by the Department in furtherance of its obligation to make reasonable efforts to reunify the family."** *Id.* at *39. After years in foster care, the children began exhibiting behaviors consistent with children who are victims of physical and sexual abuse and mother's visits were terminated by a court order. Subsequently, DCS realized the foster home was part of the problem and removed the children from the foster home but never restarted visits with the mother. DCS made no visits to the mother's home after 1999 and presented no evidence regarding the mother's current situation; her ability to parent the children; or any attempt to provide training to the mother to assist her in parenting the children. In addition, there was no proof that from a treating mental health professional as to the type of environment the children required.

State Dep't of Children's Servs. v. T.L.C., No. M2003-00509-COA-R3-JV, 2003 Tenn. App. LEXIS 848 (Tenn. Ct. App. December 3, 2003). Father appealed the termination of his parental rights. **The Middle Section held DCS failed to prove persistence of conditions by clear and convincing evidence.** The Court vacated and remanded the proceeding. The Court summarized the original conditions that led to the child's removal as the father's lack of parenting skills; his financial inability to provide basic necessities; and the parents' separation resulting in instability in the home. In reviewing each condition designated by the trial court in the order terminating parental rights, **the Court found there was not clear and convincing proof that in all reasonable probability any of the conditions would cause the child to be subjected to abuse or neglect.** These conditions included: 1) the father's five different residences during the 18-month period preceding the filing of the petition (there was no proof any were unsafe or unhealthy

for the child); 2) the parents' sporadic work history and that at the time of removal the electric services had been discontinued because the father was unemployed (no proof was presented that the father was without services subsequent to the removal); 3) at times visitation was not exercised by the parents; 4) the instability of the parents' relationship; 5) domestic violence (trial court failed to make specific findings of the circumstances and only addressed the issue in the "best interest" analysis). In addition the Court found the trial court's determination that the father did not complete high school was erroneous but, if that were the case, this condition does not meet the criteria that in all reasonable probability it would cause further abuse.

In re M.A., No. M2002-02701-COA-R3-JV, 2003 Tenn. App. LEXIS 706 (Tenn. Ct. App. October 1, 2003). Mother appealed the termination of her parental rights. One issue on appeal was whether DCS proved persistence of conditions by clear and convincing evidence. The conditions that led to the children's removal were the sexual abuse of one of the children by the mother's boyfriend and her failure to report the abuse. The juvenile court had adjudicated this issue during the child dependency proceedings. During their stay in foster care, it became obvious the boyfriend had physically and emotionally abused the two other children. **Despite the judicial finding of abuse, the efforts to inform the mother of the facts surrounding the reporting of the abuse, the statements and fear of her children, and an attempt to work through the issues in a therapeutic setting, the mother continued to deny the abuse.** *Id.* at *31. The Middle Section held there was clear and convincing proof that the conditions that led to the removal persisted and conditions existed that in all reasonable probability would subject the children to further abuse or neglect. (But see, *State Dep't of Children's Servs. v. R.S.* below.)

State Dep't of Children's Servs. v. R.S., No. M2002-00919-COA-R3-CV, 2003 Tenn. App. LEXIS 657 (Tenn. Ct. App. September 11, 2003). The trial court denied the petition to terminate the parents' parental rights and DCS appealed. One ground relied upon by DCS in the petition was persistence of conditions. The Department's position appeared to be that the conditions that led to removal **persisted because the parents refused to acknowledge sexual abuse of the children. There was never a finding of sexual or severe abuse by the juvenile court in the child dependency proceedings; and the trial court in the termination of parental rights proceeding found that DCS failed to prove the abuse by clear and convincing evidence.** The Middle Section upheld the trial court's findings. (But see, *In re M.A.* above.)

Department of Children's Services v. Whaley, No. E2001-00765-COA-R3-CV, 2002 Tenn. App. LEXIS 383 (Tenn. Ct. App. May 30, 2002). **Eastern Section reversed the termination of the parental rights of mother because DCS failed to prove the conditions that led to removal persisted.** The child was removed from the home because the mother was visually impaired, was unable to care for the child, was not medicating or feeding the child properly, and there were no relatives willing to assist her. The Court held the mother's visual impairment had not prevented her from being somewhat self sufficient; fully complying with the permanency plan; attending almost every visitation with her son over a five-year period; completing vocational training; and obtaining a job. A psychologist testified at the termination hearing that the primary concern was the mother's ability to care for a child with asthma and perform appropriate breathing treatments. The Court held there was no evidence anyone ever attempted to teach the mother how to properly medicate the child or that she was unable to do so. The case was remanded to the juvenile court to investigate the possibility of placing the child and mother in the home of certified foster parent and neighbor of the mother who had contacted DCS more than once prior to the termination hearing to offer her home to the mother and child.

See also:

Stokes v. Arnold, 27 S.W.3d 516 (Tenn. Ct. App. 2000)

V.D. v. N.M.B., No. M2003-00186-COA-R3-CV, 2004 Tenn. App. LEXIS 465, (Tenn. Ct. App. July 26, 2004).

Department of Children Servs. v. Bardin, No. 03A01-9705-JV-00152, 1997 Tenn. App. LEXIS 764 (Tenn. Ct. App. November 3, 1997). Permission to appeal denied.

4.09 Abandonment

4.09 (a) Statutory Definitions of Abandonment

In re D.L.B., 118 S.W.3d 360 (Tenn. 2003). A petition to terminate the father's parental rights was filed in juvenile court and a subsequent petition was filed in chancery court. The petition in juvenile court was dismissed and the chancery court terminated the father's parental rights on the ground of abandonment, pursuant to T.C.A. § 36-1-102(1)(A)(i) – failure to visit or support the child for four months preceding the filing of the petition. To compute the four-month period, the chancellor used the date immediately preceding the filing of the petition in juvenile court that was dismissed. The Court of Appeals affirmed. **The Supreme Court held the lower courts erred in interpreting T.C.A. § 36-1-102(1)(A)(i) and T.C.A. § 36-1-102(1)(F) and that, reading the statutes as a whole, T.C.A. § 36-1-102(1)(A)(i) “requires that the willful failure to visit, support, or make reasonable payments toward the support of the child must have occurred in the four months immediately preceding the filing of the petition currently before the court.”** *Id.* at 366, (emphasis added).

In addition the Court of Appeals upheld the termination of parental rights pursuant to T.C.A. § 36-1-102(1)(A)(iii) and found the payments made by the father to the mother immediately preceding the child's birth were unreasonable. **The Supreme Court held the Court of Appeals erred in affirming the termination pursuant to T.C.A. § 36-1-102(1)(A)(iii) because it failed to address the required element of “willfulness.”** *Id.* at 367.

Tennessee Baptist Children's Homes, Inc. v. Swanson (In Re Swanson), 2 S.W.3d 180, (Tenn. 1999). **Supreme Court held T.C.A. § 36-1-102(1)(D) is unconstitutional due to the failure of the legislature to include the element of intent within the definition of “willfully failed to support” and “willfully failed to make reasonable payments toward such child's support.”** In January 1996, Tennessee Baptist Children's Home (TBCH) filed a petition to terminate the parental rights of the parents. The father failed to appear for the hearing and a default judgment was entered terminating his rights. The father appealed to the circuit court and the judgment was set aside and remanded for a hearing. The juvenile court conducted a hearing and terminated the father's parental rights on the ground of abandonment. The father again appealed to the circuit court and the termination of parental rights was reversed and remanded to the juvenile court for placement of the child with the father. The Court of Appeals reversed the decision of the circuit court based upon its finding that the father had abandoned the child within the statutory definition of T.C.A. § 36-1-102(1)(A). Supreme Court reversed the judgment of the Court of Appeals stating:

Certainly, a parent who has abandoned his child, either be willfully failing to visit or by willfully failing to support, is unfit. However, Tennessee Code Annotated section 36-1-102(1)(D) may be read to permit termination of parental rights even when the failure to pay support was not intentional.

Since the statutory definitions of “willfully failed to support” and “willfully failed to make reasonable payment towards such child's support” in effect create an irrebuttable presumption that the failure to provide monetary support for the four months preceding the petition to terminate parental rights constitutes abandonment, irrespective of whether that failure was intentional, we hold that those definitions are unconstitutional. *Id.* at 13.

In re M.J.B., 140 S.W.3d 643, (Tenn. Ct. App. 2004). Permission to appeal denied. Court of Appeals reversed the finding of willful abandonment but affirmed the termination of parental rights on other grounds. **Proof of abandonment requires more than showing that parent did not pay support. Burden of producing clear and convincing evidence requires that proof be shown that parent was able to provide support and voluntarily chose not to do so.**

In re A.D.A., 84 S.W.3d 592, (Tenn. Ct. App. 2002). Court of Appeals reversed the finding of willful abandonment but affirmed the termination of parental rights on other grounds. The Department of Children's Services filed a termination of parental rights petition alleging, among other grounds, abandonment in that: 1) the mother willfully abandoned the child because she failed to visit or support the child for more than four consecutive months preceding the filing of the petition pursuant to T.C.A. § 36-1-102(1)(A)(i); and 2) the child had been removed from the home as a result of a petition filed in juvenile court, was found to be a dependent and neglected child and placed in custody of the department, the juvenile court found the department made reasonable efforts to prevent removal or that the circumstances prevented reasonable efforts from being made, and for four months following the removal the department made reasonable efforts to assist the parents to establish a suitable home for the child, but the parents made no reasonable efforts to provide a suitable home and demonstrated a lack of concern for the child that it appears unlikely they will be able to provide a suitable home at an early date, pursuant to T.C.A. § 36-1-102(1)(A)(ii). The child was placed in a foster home more than two hours away from the mother's home. **The Court of Appeals found that the mother's efforts to visit the child were hampered by her lack of transportation. In addition, it was not sufficient that DCS agreed to transport the child half way to the mother's home. The Court held the record did not support a finding of clear and convincing evidence of "intentional" abandonment pursuant to T.C.A. § 36-1-102(1)(A)(i).** *Id.* at 598. The Court sustained the termination of parental rights on the grounds of abandonment pursuant to T.C.A. § 36-1-102(1)(A)(ii), substantial noncompliance with the permanency plan and persistence of conditions.

State v. Calabretta (In re J.J.C.), No. W2002-01400-COA-R3-JV, 2004 Tenn. App. LEXIS 47 (Tenn. Ct. App. January 23, 2004). Permission to appeal denied. Father appealed the termination of his parental rights. One issue on appeal was whether DCS had proven by clear and convincing evidence that the father abandoned his children for failure to pay child support the four months preceding his incarceration. Father conceded he did not provide any money to DCS during the children's stay in foster care but **argued his failure to make support payments was not "willful" as he was not aware of his obligation to pay support.** The Western Section held:

Failure of a parent to pay support under the termination statutes is "willful" if the parent "is aware of his or her duty to support, has the capacity to provide the support, makes no attempt to provide support, and has no justifiable excuse for not providing the support."

In re Adoption of Muir, 2003 Tenn. App. LEXIS 831, No. M2002-02963-COA-R3-CV, 2003 WL 22794524, at *5 (Tenn. Ct. App. Nov. 25, 2003) (citing cases from other jurisdictions). *Id.* at *17.

The Court found there was no evidence DCS explained to the father that he was obligated to pay support and that if he did not his parental rights would be terminated; and the permanency plans implied he was not required to pay support unless there was a court order to do so. The Court cited *State v. Demarr*, 2003 Tenn. App. LEXIS 569, No. M2002-02603-COA-R3-JV, 2003 WL 21946726 (Tenn. Ct. App. Aug. 13, 2003). **The Court held the failure to pay support was not willful and vacated and remanded the termination of parental rights as to the father.**

In re S.M., No. M2003-00422-COA-R3-PT, 2004 Tenn. App. LEXIS 27 (Tenn. Ct. App. January 15, 2004). Editor's Note: see case for an excellent legal analysis of "willful."

State Dep't of Children's Servs. v. L.L.T., No. E2003-00501-COA-R3-JV, 2003 Tenn. App. LEXIS 955 (December 30, 2003). Permission to appeal denied. Two of the four issues raised on appeal of the termination of the mother's parental rights involved the ground of abandonment. The first was that there was not clear and convincing evidence that the mother failed to visit the child for four months preceding her incarceration. The Eastern Section held that though she attended most of the visits it amounted to "token visitation." The Court stated:

"Visitation" is much more than a mere physical presence...Mother spent her visitation sessions applying makeup, sleeping, and arguing with Father, rather than properly focusing her attention on and caring for the child. Such "perfunctory" presence with the child does not preclude a finding of abandonment under the statute. *Id.* at *12-13.

The second issue was that there was not clear and convincing evidence presented that she failed to pay child support as she did not know she was supposed to. The Court held payment of child support is not conditioned on a court order, citing *State Dep't of Human Services v. Manier*, No. 01A01-9703-JV-00116, 1997 WL 675209, 1997 Tenn. App. LEXIS 755 (Tenn. Ct. App. October 31, 1997).

In re D.D.K., No. M2003-01016-COA-R3-PT, 2003 Tenn. App. LEXIS 927 (Tenn. Ct. App. December 30, 2003). DCS filed the petition to terminate parental rights and the father's rights were terminated on the ground of abandonment. **The Middle Section held DCS failed to comply with the procedures outlined pursuant T.C.A. § 37-2-403. The Court found when a child is placed in foster care "the legislature has determined that the ground of abandonment must be explained to the parents"** *Id.* at *12. The Court held:

Thus, DCS was not authorized to proceed on the ground of abandonment unless it could show (1) Father was given the required notice by a permanency plan containing the notice and signed by Father or that Father refused to sign such a plan presented to him, (2) in the absence of those documents, some court record showing an explanation by the court of the consequences of abandonment, or (3) an affidavit of diligent efforts by DCS to provide such notice prior to the filing of the termination petition. Our review of the record before us contains none of these alternative methods of showing notice. *Id.* at 16.

The Court vacated the order terminating the father's rights on the ground of abandonment because there was no proof the father was ever notified of the definition and consequences of abandonment or of any reason justifying the failure to provide the notice.

State Dep't of Children's Servs. v. R.S., No. M2002-00919-COA-R3-CV, 2003 Tenn. App. LEXIS 657 (Tenn. Ct. App. September 11, 2003). The trial court denied the petition to terminate the parents' parental rights and DCS appealed. One ground relied upon by DCS in the petition was abandonment for failure to visit or provide child support. **The trial court found the parents attended the majority of visits and that DCS cancelled more visits than the parents missed. The trial court held the visitation was not "token visitation." The trial court found the consequences of not paying child support were not clearly explained to the parents who had mental problems. The trial court held DCS had not met its burden of proof under Swanson establishing "a settled purpose to forego all parental duties and to relinquish all parental claims to the child."** *Id.* at *28. The Middle Section upheld the trial court's findings.

Dep't of Children's Servs. v. C. L., No. M2001-02729-COA-R3-JV, 2003 Tenn. App. LEXIS 606 (Tenn. Ct. App. August 29, 2003). Parents appealed the termination of their parental rights to nine children. One issue on appeal was whether DCS proved by clear and convincing evidence that the parents abandoned the children for failure to pay child support. **Middle Section held the "Father's conduct throughout this case does not evince a purpose to forego parental claims to his children or an overall lack of parental responsibility by the Father..."***Id.* at *53 (emphasis added). The Court found this to be an essential element of abandonment as required by *In re Swanson*, 2 S.W.3d 180, 184 (Tenn. 1999). The Court found the father expressed confusion regarding the amount of support and method to pay the support. Also, the failure to support in the four months preceding the filing of the petition **"should be considered in light of mitigating factors such as the money he spent on furnishings and the court costs and other expenses he was required to pay as part of his community corrections sentence."** *Id.* at *52-53 (emphasis added). The Court reversed and remanded the termination on this and other grounds.

In re Z.J.S., No. M2002-02235-COA-R3-JV, 2003 Tenn. App. LEXIS 415 (Tenn. Ct. App. June 3, 2003). One issue raised by the mother on appeal of the termination of her parental rights was whether there was clear and convincing evidence that she willfully abandoned the children for failure to provide support. The trial court found she had provided only "token support." **The Middle Section found that support of a child may be considered "token" only if it is "insignificant" in light of the parent's "means."** The Court held **"(a) finding of 'insignificance under Tenn. Code Ann. § 36-1-102(1)(B) cannot be made without evidence regarding both a parent's actual financial support of his or her child and a parent's 'means.'"** *Id.* at *40 (emphasis added). **DCS failed to present evidence regarding the mother's ability to support the children.** The Court vacated the portion of the judgment related to abandonment.

In re D.M., No. M2002-01317-COA-R3-JV, 2003 Tenn. App. LEXIS 135 (Tenn. Ct. App. February 20, 2003). **Middle Section held DCS failed to prove abandonment by clear and convincing evidence for failure of the mother to visit or support her children.** The mother was a minor when she gave birth to both children. She was placed in foster care before the birth of her second child. Upon turning 18 years old, the mother was released from custody and entered the Army. Both children remained in custody. The permanency plan required the mother maintain visitation and pay child support "as ordered by the court." The Court held there was no proof the mother failed to visit her children during the four months preceding the filing of the petition as she visited while on leave. The Court also found that, though the mother did not pay child support, there was no court order regarding child support and "DCS did not give her adequate guidance in this matter." *Id.* at *10.

Henderson v. State, Dep't of Children Serv., (In re T.L.P.), No. W1999-01940-COA-R3-CV, 2001 Tenn. App. LEXIS 638 (Tenn. Ct. App. August 22, 2001). The mother appealed the termination of her parental rights alleging, among other issues, that there was not clear and convincing evidence of abandonment. The Western Section **held because she was incarcerated during the four months immediately preceding the filing of the petition, her failure to visit and/or to support the children was not intentional.** The termination of parental rights was affirmed on other grounds.

In re Hoover-Crawford, No. M2000-01655-COA-R3-CV, 2001 Tenn. App. LEXIS 554 (Tenn. Ct. App. July 27, 2001). The Middle Section held DCS failed to establish abandonment in that for a period of four consecutive months prior to filing the petition to terminate parental rights, the mother failed to visit the children or only engaged in token visitation. **The Court held the mother did not willfully fail to visit during the one month she was hospitalized.** However, the Court also held that, because she signed the permanency plan indicating she had received a copy of the procedures for termination of parental rights and was given an explanation of its contents, she was aware of her obligation to pay child support and intentionally failed to pay support.

In re M.C.G., No. 01A01-9809-JV-00461, 1999 Tenn. App. LEXIS 327 (Tenn. Ct. App. May 26, 1999). Western Section affirmed termination of mother's parental rights pursuant to T.C.A. § 36-1-102 (1)(A)(i) and (iv). Court of Appeals held that **where abandonment was alleged and mother was incarcerated for a portion of the four months preceding the filing of the petition to terminate parental rights, the critical time period for determining abandonment is the four-month period preceding the parent's incarceration pursuant to T.C.A. § 36-1-102 (1)(A)(iv)**. The Court also held that the mother abandoned the child pursuant to T.C.A. § 36-1-102 (1)(A)(i) by visiting the child two times in the nine-month period immediately preceding the filing of the termination of parental rights petition. The Court found these visits to be "token visitation" on the mother's part. *See also In re Rice*, 1999 Tenn. App. LEXIS 116, No. 02A01-9809-CH-00239 (Tenn. Ct. App., February 23, 1999).

CASA Juvenile Services Association v. Musick, No. 03A01-9708-JV-00368, 1998 Tenn. App. LEXIS 227 (Tenn. Ct. App. March 27, 1998). **Mother failed to avail herself of available transportation to visit her children for over one year.** Eastern Section affirmed termination of mother's parental rights for abandonment under T.C.A. § 36-1-113(g)(1).

In re Adoption of Massengale, Bull v. Randolph, No. 03A01-9708-CV-00373, 1998 Tenn. App. LEXIS 206 (Tenn. Ct. App. March 25, 1998). **Eastern Section affirmed the judgment of the trial court that held there was not clear and convincing evidence to support the termination of parental rights petition against the father.** The trial court relied on case law prior to the 1996 amendment to T.C.A. § 36-1-102(1)(G). The Court of Appeals used a different analysis but sustained the trial court's ruling that the father had not abandoned his child, and therefore did not terminate the father's parental rights. In its analysis the Court of Appeals stated:

By a 1996 amendment to T.C.A. § 36-1-102(1)(G), the Legislature specifically overruled the definition of abandonment contained in *Koivu* by providing the following: (G) "Abandonment" does not have any other definition except that which is set forth herein, it being the intent of the general assembly to establish the only grounds for abandonment by statutory definition. Specifically, it shall not be required that a parent be shown to have evinced a settled purpose to forego all parental rights and responsibilities in order for a determination of abandonment to be made. Decisions of any court to the contrary are hereby legislatively overruled. *Id.* at *10.

In re Shipley, No. 03A01-9611-JV-00369, 1997 Tenn. App. LEXIS 651 (Tenn. Ct. App. September 29, 1997). **Eastern Section affirmed judgment of trial court terminating the father's parental rights on the ground of abandonment.** One issue presented by the father on appeal was that the evidence preponderated against the trial court's judgment on the ground of abandonment. The Court of Appeals held that, though the father had visited the children prior to his incarceration, the visitation was "'perfunctory' in nature . . . [and] 'token visitation' at best," pursuant to T.C.A. § 36-1-102(1)(C). *Id.* at *10.

See also:

In re Adoption of Female Child, Bond v. McKenzie, 896 S.W.2d 546 (Tenn. 1995).

In re Adoption of Bowling, 631 S.W.2d 386 (Tenn. 1982).

Means v. Ashby, 130 S.W.3d 48 (Tenn. Ct. App. 2003).

In re L.J.C., 124 S.W.3d 609 (Tenn. Ct. App. 2003).

In re Adoption of Copeland, 43 S.W.3d 483 (Tenn. Ct. App. 2000).

Menard v. Meeks (In re Menard), 29 S.W.3d 870 (Tenn. Ct. App. 2000).

In re Adoption of Thompson, 943 S.W.2d 393 (Tenn. Ct. App. 1996).

O'Daniel v. Messier, 905 S.W.2d 182 (Tenn. Ct. App. 1995).

In re Adoption of Self, 836 S.W.2d 581 (Tenn. Ct. App. 1992).
In re Adoption of Parsons, 766 S.W.2d 196 (Tenn. Ct. App. 1988).
Koivu v. Irwin, 721 S.W.2d 803 (Tenn. Ct. App. 1986).
Pack v. Rogers, 538 S.W.2d 607 (Tenn. Ct. App. 1976).
Pierce v. Bechtold, 60 Tenn. App. 478, 448 S.W.2d 425 (1969).
Fancher v. Mann, 58 Tenn. App. 471, 432 S.W.2d 63 (1968).
Ex Parte Wolfenden, 48 Tenn. App. 433, 348 S.W.2d 751 (1961).
In re A.M.T., No. M2003-02926-COA-R3-PT, 2004 Tenn. App. LEXIS 42, (Tenn. Ct. App. July 2, 2004).
In re C.D.C., Jr., No. E2003-01832-COA-R3-PT, 2004 Tenn. App. LEXIS 351 (Tenn. Ct. App. June 7, 2004).
C.D.C. v. C.E.D., No. E- 2001-02086-COA-R3-CV, 2002 Tenn. App. LEXIS 334 (Tenn. Ct. App. May 6, 2002).
State v. Layne, No. M2001-00652-COA-R3-JV, 2002 Tenn. App. LEXIS 78, (Tenn. Ct. App. February 1, 2002).
K.S.O.H. v. J.W.B., JR. In re: Adoption of a Male Child, T.J.B. (In re T.J.B.), No. E2001-00055-COA-R3-CV, 2001 Tenn. App. LEXIS 740 (Tenn. Ct. App. October 4, 2001).
In re Adoption of Kratochvil, Coone v. Kratochvil, No. 03A01-9712-CH-00536, 1998 Tenn. App. LEXIS 667 (Tenn. Ct. App. October 2, 1998).
Gatlin v. Department of Human Services, No. 01A01-9607-JV-00311, 1997 Tenn. App. LEXIS 83 (Tenn. Ct. App. February 5, 1997).

4.09 (b) Abandonment as Wanton Disregard for Child's Welfare

***In re C.W.W.*, 37 S.W.3d 467, (Tenn. Ct. App. 2000). The Court of Appeals held the mother's drug habit and her related criminal activity constituted conduct exhibiting a wanton disregard for her children and affirmed the termination of her parental rights.** The Court found in the four months preceding her incarceration the mother relapsed and began using crack cocaine; was absent from the home for extended periods; left the children alone with very little food or clean clothing; and engaged in prostitution to support her drug habit. The termination was upheld though the mother had completed five months of a two-year treatment program, remained drug-free and was making progress. (See 4.11 below for best interest analysis.)

***Department of Human Servs. v. Hauck*, 872 S.W.2d 916 (Tenn. Ct. App. 1993).** Permission to appeal denied. The incarcerated father's parental rights were terminated on the ground of abandonment: wanton disregard for the welfare of the child. The evidence offered to prove wanton disregard, equivalent to abandonment, included severe cradle cap, diaper rash and blistering of the diaper area, and filthy conditions in general." The Court of Appeals held the **totality of evidence supported termination of defendant's parental rights as "compellingly in the best interests of the child;"** and clearly within the legislative intent expressed in T.C.A. §37-2-401. *Id.* at 921.

***In re C.T.S.*, No. W2003-01679-COA-R3-PT, 2004 Tenn. App. LEXIS 522, (Tenn. Ct. App. August 16, 2004).** Permission to appeal denied. Western Section affirmed termination of incarcerated mother's parental rights. Court found Mother had engaged in conduct prior to incarceration which exhibited a **wanton disregard** for the welfare of the child. **"Mother ingested crack cocaine during her pregnancy and immediately before the birth of C.T.S., knowing the effects it would have on her child. Mother's knowledge of these effects, moreover, was more than theoretical as she previously had given birth to a child who also was born addicted to cocaine. Such conduct clearly exhibits a wanton disregard for the welfare of the child."** *Id.* at *16.

In re Shipley, No. 03A01-9611-JV-00369, 1997 Tenn. App. LEXIS 651 (Tenn. Ct. App. September 29, 1997). Eastern Section affirmed termination of incarcerated father's parental rights on the ground of abandonment: **wanton disregard for welfare of the child. Evidence included willful failure to visit before his incarceration, his token visitation including sleeping during visits, evidence of substance abuse problem, and recent criminal activity. All showed wanton disregard for welfare of children.**

See also:

Department of Human Servs. v. Purcell, 955 S.W.2d 607 (Tenn. Ct. App. 1997).

In re C.LaC., No. M2003-02164-COA-R3-PT , 2004 Tenn. App. LEXIS 172, (Tenn. Ct. App. March 17, 2004.)

State Dep't of Children's Servs. v. F. E. B., No. E2001-00942-COA-R3-JV, 2003 Tenn. App. LEXIS 121 (Tenn. Ct. App. February 12, 2003).

State Dep't of Children's Servs. v. J.S., No. M2000-03212-COA-R3-JV, 2001 Tenn. App. LEXIS 796 (Tenn. Ct. App. October 25, 2001).

Department of Children's Servs. v. Osborne, No. 01-A01-9810-JV-00564, 1999 Tenn. App. LEXIS 524, 1999 WL 557543 (Tenn. Ct. App. Aug.2, 1999).

4.10 Confinement to Correctional Institute For 10 or More Years/Child Under 8

M.P.P. v. D.L.K., (In re C.E.P.), No. E2001-00706-COA-R3-CV, 2002 Tenn. App. LEXIS 214 (Tenn. Ct. App. March 26, 2002) **Eastern Section upheld partial summary judgment of the trial court that there was clear and convincing evidence the father was confined in a correctional or detention facility by order of a court as a result of a criminal act, under a sentence of ten or more years, and the child was under eight years of age.** The father argued the proof was insufficient because he would not serve his full sentence as a result of good behavior. The Court, citing *In re Copeland*, 43 S.W.3d 483 (Tenn. Ct. App. 2000), held the language of T.C.A. § 36-1-113(g)(6) clearly shows the statute applies to the length of the sentence and the age of the child, not the amount of time served. The Court vacated and remanded for further proceedings the partial summary judgment that found the termination of parental rights to be in the best interest of the child.

In re C.M.R., No. M2001-00638-COA-R3-JV, 2001 Tenn. App. LEXIS 105, (Tenn. Ct. App. February 7, 2002). Middle Section affirmed termination for parental rights on the grounds that the parents had received a sentence of ten years or more and the children were under the age of eight at the time the sentence was imposed and that the parents had been sentenced to more than two years for severe child abuse of one child. The father asserted the termination proceeding should have been continued pending disposition of the motion for a new trial in the criminal proceeding. **The Court held there was no basis for requiring a child to remain ineligible for adoption and the possibility of a permanent home while the parent pursues a reversal of a criminal conviction.**

Worley v. Department of Children's Servs., No. 03A01-9708-JV-00366, 1998 Tenn. App. LEXIS 103 (Tenn. Ct. App. February 10, 1998). **Eastern Section affirmed termination of father's parental rights because of his incarceration on 25 year sentence pursuant to T.C.A. §36-1-113(g)(6). Statute does not violate due process.**

See also:

In re Copeland, 43 S.W.3d 483 (Tenn. Ct. App. 2000).

State Dep't of Children's Servs. v. F. E. B., No. E2001-00942-COA-R3-JV, 2003 Tenn. App. LEXIS 121 (Tenn. Ct. App. February 12, 2003).

State v. D. S., No. M2000-02380-COA-R3-JV, 2001 Tenn. App. LEXIS 340 (Tenn. Ct. App. May 9, 2001).

4.11 Additional Grounds - Non-legal v. Legal Parent

Editor's Note: T.C.A. § 36-1-113(g)(9)(A) was amended effective June 2, 2003 to add the italicized wording below and now reads:

The parental rights of any person who, *at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child*, is not the legal parent or guardian of such child or who is described in § 36-1-117(b) or (c) may also be terminated based upon any one (1) or more of the following additional grounds

In re D.A.H., 142 S.W.3d 267 (Tenn. 2004). **Supreme Court held the amended version of T.C.A. § 36-1-113(g)(9)(A) may not be applied retroactively to this case.** Pre-adoptive parents filed a termination of parental rights petition in juvenile court. Father subsequently filed a petition to establish paternity. A consent order was entered establishing paternity prior to the hearing on the termination of parental rights petition. The trial court terminated father's parental rights on several grounds applicable to those who are not legal parents. Relying on *Jones v. Garrett*, 92 S.W.3d 835 (Tenn. 2002), the Court of Appeals reversed the termination because the father was adjudicated the legal father prior to the termination hearing. Supreme Court vacated the order terminating the father's parental rights.

4.12 Best Interests of the Child

Nash-Putnam v. McCloud, 921 S.W.2d 170 (Tenn. 1996). **Supreme Court held the trial court must find by clear and convincing evidence that termination of parental rights is in the child's best interest.**

In re Adoption of Female Child, Bond v. McKenzie, 896 S.W.2d 546 (Tenn. 1995). **"In a contest between a parent and a nonparent, a parent cannot be deprived of the custody of a child unless there has been a finding, after notice required by due process, of substantial harm to the child. Only then may a court engage in a general 'best interest of the child' evaluation in making a determination of custody."** *Id.* at 548. (Emphasis added.) Supreme Court rejected the notion that custody may be awarded to a non-parent as in the best interest of the child" even if the natural parent was not found unfit.

Dep't of Children's Serv. v. Gorrell, 85 S.W.3d 781 (Tenn. Ct. App. 2002). **The trial court declined to terminate the parental rights to one child finding it was not in the child's best interest.** The trial court awarded permanent custody of the child to the Department of Children's Services. The Department appealed. The Court of Appeals affirmed the trial court's finding that it was not in the best interests of the child to terminate parental rights. The child in question wanted to maintain a relationship with her mother. **The Court found it would be harmful to the child to sever the relationship with her mother due to the age of the child and trauma she had experienced.** The child had been in the care of a foster mother for several years and wanted to remain there. The Court found that if the matter was appealed to the Supreme Court, the child would be within one year of her majority by the time the issue was resolved.

In re Adoption of A.K.S.R., 71 S.W.3d 715 (Tenn. Ct. App. 2001). Permission to appeal denied. T.C.A. § 36-1-115(g)(1), that provides foster parents shall be given first preference to adopt a child if the child has resided in the foster home for twelve months or more, applies when a child is available for adoption due to termination or surrender of parental rights. The Court held there is not a preference for placement with a relative under the adoption code provisions. In this case the foster parents with whom the children had resided for more than one year filed a petition to terminate parental rights and for adoption. The paternal aunt and DCS filed intervening petitions. The trial court held a bifurcated hearing; terminated the parents' rights; and awarded custody of the children to the paternal aunt. The Court of Appeals stayed the order in regard to the transfer of custody. The Court held T.C.A. § 37-2-403(a)(1) and (d), that create a preference for family placement, apply to the foster care of children but not to adoption. **The Court found that since there is not a preference for family placement pursuant to the adoption code, the best interest of the children is paramount. The Court held the continuity of placement was the most important factor in considering the children's best interest in this case. The trial court's decision was reversed and the foster parents' petition for adoption granted.**

In re C.W.W., 37 S.W.3d 467 (Tenn. Ct. App. 2000). The Court of Appeals **sustained the finding of the trial court that termination of the mother's parental rights was in the best interests of the children though she had completed five months of a two-year treatment program, remained drug-free and was making progress.** In reviewing best interests the Court found the mother was not able to provide a home for the children at the time of trial; she provided no time frame for providing a home or other support; she was not employed and had no means to support her children beyond a small stipend; she had not used any of her funds to provide the children with gifts or basic necessities; and had not offered to pay even token support.

In re M.W.A., 980 S.W.2d 620 (Tenn. Ct. App. 1998). **The Middle Section found it would not be in the children's best interest to place them with relatives who had filed for custody just prior to the termination of parental rights hearing.**

In re M.E.W., No. M2003-01739-COA-R3-PT, 2004 Tenn. App. LEXIS 250 (Tenn. Ct. App. April 21, 2004). Trial court denied the termination of parental rights petition filed by DCS as termination was not in the best interest of the children and DCS appealed. On appeal DCS argued that the express public policy of Tennessee established by legislation and case law, where a child cannot be returned to the parent in the foreseeable future, is that it is in the best interest of the child to be permanently integrated into an adoptive home rather than remaining in the uncertainty of foster care. Middle Section held **"a general public policy favoring adoption, which must be preceded by termination of parental rights, over long term foster care cannot substitute for an individualized determination of the best interest of the child who is the subject of the termination proceeding....each situation must be analyzed according to the facts of the case, the statutory factors listed in *Tenn. Code Ann. § 36-1-113(i)*, and any other relevant factors, including the effect of termination on the child."** *Id.* at *36-7.

In re D.M., No. M2002-01317-COA-R3-JV, 2003 Tenn. App. LEXIS 135 (Tenn. Ct. App. February 20, 2003). The Middle Section reversed the termination of the mother's parental rights. In its analysis of "best interest" the Court found "there was no testimony as to any adoptive parents waiting in the wings. The record shows so far, D.M., has been in four different foster homes, and that M.M. has been in the birthing center and three foster homes." *Id.* at *14. The court noted that the lack of a permanent home at that point in time factored into its finding that DCS had not met its burden of proving by clear and convincing evidence that the termination was in the children's best interests.

State v. R.S.P., No. E2002-00442-COA-R3-JV, 2002 Tenn. App. LEXIS 792 (Tenn. Ct. App. October 31, 2002). Permission to appeal denied. The child was adopted by his paternal grandparents and their rights

were terminated based on the ground of persistence of conditions. The adoptive mother appealed. The Eastern Section affirmed the judgment of the trial court. The Court **reviewed the findings of the trial court as to the best interest determination and held that the most important factor was “the adoptive mother’s intellectual, educational and emotional limitations formed the basis for all of her problems as a mother, and that in light of these shortcomings, it would be in the best interests to terminate her parental rights.”** *Id.* at *11.

State Dep’t of Children’s Servs. v. D.G.B., No. E2001-02426-COA-R3-JV, 2002 Tenn. App. LEXIS 647 (Tenn. Ct. App. September 10, 2002). Eastern Section reviewed the trial court’s finding that it was not in the best interest of the child to terminate parental rights. The Court reversed the decision finding the termination of parental rights was in the best interest of the child. The child had been in the DCS custody for over four years when the petition was filed. The child had been severely abused by his parents. A psychologist testified that both parents suffered from psychological problems and were not capable of safely parenting the child. The trial court found the child had mental and physical impairments and essentially was not adoptable. The trial court also found the child and parents could have a meaningful relationship but this could not be continued without the assistance of DCS. Because of these reasons the trial court found it would not be in the best interest of the child to terminate the relationship, even though the parents would never be able to safely care for the child.

The Appellate Court held the statutory scheme of T.C.A. Titles 36 and 37 is to return children to the care of their parents and not simply to establish a “meaningful relationship” while maintaining the child in foster care. The Court determined the trial court used the wrong legal standard to determine best interest. Pursuant to T.C.A. § 36-1-113(i)(1)-(9), since the child can never be returned to the care of his parents, the development of a meaningful relationship without more is insufficient to support a finding that it is not in the best interest of the child to terminate parental rights. **The Court held there was no direct evidence to support the contention that the child was unadoptable. Because of the child’s mental and physical impairments finding an adoptive placement may be more difficult “but this does not mean that such placement is impossible.”** *Id.* at *24.

C.J.H. v. A.K.G., No. M2001-01234-COA-R3-JV, 2002 Tenn. App. LEXIS 581 (Tenn. Ct. App. August 9, 2002). After the child’s birth, mother and father filed a joint petition for legitimation. The petition was granted and father was ordered to pay child support and reasonable visitation. The father never visited the child after the child’s birth. The mother and father subsequently filed a joint petition to terminate father’s parental rights. At the termination of parental rights hearing the father admitted he had not visited and did not desire to establish a parental relationship with the child and the mother had adequate means to financially care for the child and strong family support. **The trial court held it was not in the child’s best interest to terminate parental rights and the Middle Section affirmed the judgment. The Court held the loss of a child’s right to future support from a parent is an appropriate factor to consider in determining whether termination of parental rights is in the child’s best interest.** The Court found that in some instances Tennessee statutes allow a voluntary surrender of parental rights (i.e., T.C.A. § 36-1-102(47), 111, and 117(f) and (g)) but only in the context of an adoption. *But see: In the Matter of Rainey*, No. W2000-00504-COA-R3-CV, 2001 Tenn. App. LEXIS 190 (Tenn. Ct. App. March 20, 2001).

M.P.P. v. D.L.K., In re C.E.P., No. E2001-00706-COA-R3-CV, 2002 Tenn. App. LEXIS 214 (Tenn. Ct. App. March 26, 2002) **Eastern Section vacated and remanded for further proceedings the partial summary judgment that found the termination of parental rights to be in the best interest of the child as there was a genuine issue of material fact.** The Court upheld the partial summary judgment of the trial court that there was clear and convincing evidence the father was confined in a correctional or detention facility by order of a court as a result of a criminal act, under a sentence of ten or more years, and the child was under eight years of age.

In re D.I.S., No. W2000-00061-COA-R3-CV, 2001 Tenn. App. LEXIS 358 (Tenn. Ct. App. May 17, 2001). The juvenile court, *sua sponte*, dismissed the Court Appointed Special Advocate's (CASA) petition to terminate the mother's parental rights finding the termination was not in the child's best interest. The Western Section affirmed the trial court's decision finding that "D.I.'s (the child) relationship with her Mother is a deeply troubled one, and the source of great anguish for D.I. D.I.'s heartache over her mother appears to stem from her love for Mother, juxtaposed against the inevitable disillusionment when Mother again fails her." *Id.* at *15. **The Court held it was not in the child's best interest to terminate parental rights.**

Sorrells v. Sorrells, No. E1999-01658-COA-R3-CV, 2000 Tenn. App. LEXIS 675 (Tenn. Ct. App. October 5, 2000). Eastern Section reversed and dismissed father's termination of parental rights because the **trial court failed to make a specific finding that termination was in the child's best interest.** (Editor's Note: In *White v. Moody*, No. M2000-01778-COA-R3-CV, 2001 Tenn. App. LEXIS 369 (Tenn. Ct. App. May 18, 2001), the holding was the same but instead of reversing and dismissing the case the matter was remanded for a determination of best interest of the child.)

In re S.B., No. M1999-00140-COA-R3-CV, 2000 Tenn. App. LEXIS 308 (Tenn. Ct. App. May 12, 2000). The trial court, after a bifurcated hearing that included judgment to terminate of parental rights and to determine who should adopt the children, allowed one child to be adopted by the non-relative foster parents where the child had been placed for 10 months. Relatives who had cared for the sibling were allowed to adopt that child. The relatives appealed the judgment to allow the child to be adopted by the non-relatives and argued that it was not in the children's best interest to sever the relationship of the siblings or of the child's extended family members and requested they be allowed to adopt both children. The Court affirmed the judgment of the trial court as in the best interest of the child.

In determining best interest the Court reviewed T.C.A. § 37-2-403(a)(1) that establishes a preference for placement with family over placement through adoption with non-relatives; and applies to the time DCS prepares the permanency plan. The Court also examined T.C.A. § 37-2-403(d) that provides for the preference for placement with a "fit and willing" relative immediately after the child is removed from the home and a preference for adoption by the relative with whom such initial placement has been made. The Court also addressed the preference of keeping siblings together holding that this preference is a factor to be considered in determining best interest of the child but "must give way to other considerations if the best interest of a child so dictates." *Id.* at *15, citing *Rice v. Rice*, 983 S.W.2d 680, 684 (Tenn. Ct. App. 1998). Though the foster parents did not meet the requirements of T.C.A. § 36-1-115(g)(1), the court did review this statute and the preference for adoption by foster parents who have cared for the child for 12 months or more. The Court held this statute "expresses the legislature's recognition of the importance of stability in a child's life", *id.* at 21, and cited *Taylor v. Taylor*, 849 S.W.2d 319, 328 (Tenn. 1993) holding that there is a strong presumption for continuity of placement.

Department of Children Servs. v. Taylor, No. 01A01-9610-CV-00472, 1997 Tenn. App. LEXIS 128 (Tenn. Ct. App. February 26, 1997). **Middle Section affirmed termination of mother's parental rights despite older children's testimony that they would like to return to parents and held not in their best interests to do so.**

See also:

Petrosky v. Keene, 898 S.W.2d 726 (Tenn. 1995).

Nale v. Robertson, 871 S.W.2d 674 (Tenn. 1994).

State, Dep't of Human Services v. Smith, 785 S.W.2d 336 (Tenn. 1990).

O'Daniel v. Messier, 905 S.W. 2d 182 (Tenn. Ct. App. 1995).

Drinnon v. Brown, (*In re Drinnon*, 776 S.W. 2d 96 (Tenn. Ct. App. 1988).

Tennessee Dep't of Human Services v. Riley, 689 S.W. 2d 164 (Tenn. Ct. App. 1984).

Ex Parte Wolfenden, 48 Tenn. App. 433, 348 S.W.2d 751 (1961).

State v. K.L.K., No. E2003-2452-COA-R3-PT, 2004 Tenn. App. LEXIS 443 (Tenn. Ct. App. July 6, 2004). (TPR reversed on best interest.)

In re S.M.C. and J.L.C., No.01A01-9807-JV-00358, 1999 Tenn. App. LEXIS 365 (Tenn. Ct. App. June 11, 1999).

In re M.C.G., No. 01A01-9809-JV-00461, 1999 Tenn. App. LEXIS 327 (Tenn. Ct. App. May 26, 1999).

Department of Children's Servs. v. Epps (In re Dave), No. 03A01-9710-JV-00485, 1998 Tenn. App. LEXIS 297 (Tenn. Ct. App. April 30, 1998).

5.0 MISCELLANEOUS

5.01 Federal Indian Child Welfare Act

In re Morgan, 02A01-9608-CH-00206, 1997 Tenn. App. LEXIS 818 (Tenn. Ct. App. November 19, 1997). **This is a case of first impression in Tennessee regarding the interpretation of the federal Indian Child Welfare Act (ICWA).** The Western Section affirmed the trial court's denial of the motion to intervene in an adoption proceeding filed by the Tohono O'odham Indian Nation. After an extensive analysis and review of case law from other states, **the Court adopted the "existing Indian family doctrine," and refused to apply the ICWA to cases where the children have had little or no exposure to an Indian family prior to their removal to a non-Indian family.**

The Court held that the intent of the ICWA is to remedy the removal of Indian children from an "existing Indian family unit." The Court found the ICWA inapplicable under the "existing Indian family doctrine." The mother and child were "nondomicillary" members of the Tohono O'odham Indian Nation, as the mother had not lived with the tribe or on the reservation for fifteen years. At the birth of the child, she surrendered her parental rights to an adoption agency. The mother was not married at the time of the child's birth and the father was not an American Indian. He never claimed paternity or acknowledged the child.

See also: *Powell v. Crisp*, No. E1999-02539-COA-R3-CV, 2000 Tenn. App. LEXIS 671 (Tenn. Ct. App. October 18, 2000).

5.02 Paternity

In re C.A.F., 114 S.W.3d 524 (Tenn. Ct. App. 2003). The juvenile court terminated the parental rights of the mother and biological father, but did not terminate the rights of the man who filed a voluntary acknowledgment of paternity. Genetic testing proved conclusively that this man was not the child's biological father. The juvenile court held DCS did not have standing to challenge the validity of the voluntary acknowledgment; and even if it did have standing, it failed to carry the burden of proving fraud, duress or material mistake in the execution of the acknowledgment pursuant to T.C.A. § 24-7-113(e)(1). *Id.* at *7-8. The Department appealed. The Court of Appeals held T.C.A. § 24-7-113 establishes a simplified procedure for unmarried fathers to legally establish paternity without the need of a hearing as to paternity; and the document then becomes the basis for establishing a child support order. The Court of Appeals agreed with the Department's position that **T.C.A. § 24-7-113 was not meant to allow a non-parent to obtain parental rights over a child without having to go through an adoption proceeding and that the use for such purpose violates public policy.**

5.03 Child Support

State v. Wilson, 132 S.W.3d 340 (Tenn. 2004) **Tennessee Supreme Court held that T.C.A. § 37-1-151 requires a trial court to set child support retroactive to the date a child is placed in State custody.** Trial court refused to order the parents pay child support retroactive to the date the child was placed in DCS custody voluntarily by the parents. The State filed the petition to set support almost two years after the child was placed in custody. The State appealed and argued the trial court was required to order back child support from the date the child was placed in custody pursuant to T.C.A. § 37-1-151(b)(1)-(4)(A). The Court of Appeals held where the provisions of T.C.A. § 37-1-151(b)(2), that

provide, when a child is placed in custody of an agency of the State and no prior custody order exists the court shall immediately order child support or set a hearing to be held within 45 days, are not followed, an award of retroactive child support is limited to 45 days from the date the petition is filed. The Supreme Court reversing the Court of Appeals and remanding to the trial court held the directive that a hearing be held within 45 days of placement does not limit parental liability to the State for child support. The trial judge must set “**retroactive child support according to the guidelines found in Tennessee Code Annotated § 36-5-101(e), but may deviate from the guideline amount if the deviation is accompanied by a finding that the application of the guidelines would be unjust or inappropriate.**” *Id.* at 344.

In re H.E.J. 124 S.W.3d 110 (Tenn. Ct. App. 2003). Permission to appeal denied. Trial court terminated the father’s parental rights and held that he was liable for child support arrearages prior to the entry of the order terminating parental rights in the amount of \$14,404. **Middle Section reversed this portion of the judgment and held the trial court has jurisdiction to award past child support in termination of parental rights proceedings only if the trial court has adjudicated the issue.** The Court found there was no claim for relief regarding child support arrearages in the pleadings and the only evidence to support the judgment was testimony regarding the father’s earnings presented by the father on the issue of abandonment. The father was provided “no opportunity to address the propriety of a child support award, or challenge the calculations relied upon by the trial court. *Id.* at *16.

Jones v. Jones, 930 S.W. 2d 541 (Tenn. 1996). **This case contains language that indicates a court may deviate downward from the child support guidelines when the Department of Children’s Services has taken custody of the child, the parent is making reasonable efforts to secure the return of the child and it is in the best interest of the child.**

In re T.S.R., No. W2003-01321-COA-R3-JV, 2004 Tenn. App. LEXIS 380 (Tenn. Ct. App. June 17 2004). Trial court entered an order finding T.S.R. to be the father and ordered child support. Father failed to pay support and incurred an arrearage. Father petitioned the trial court for relief pursuant to Tenn. R. Civ. P. 60 and requested a paternity test. **The DNA test indicated he was not the father. The trial court relieved the father of the ongoing child support obligation but required him to pay the arrearage.** Father appealed and argued the trial court erred in failing to declare the original order finding him to be the father and setting child support null and void once the DNA test confirmed he was not the father. Western Section held that T.C.A. § 36-5-101 and the Supreme Court’s interpretation of the statute in *Rutledge v. Barrett*, 802 S.W. 2d 604 (Tenn. 1991) precluded the father’s argument that the original order should be declared null and void. The Court also found the father’s estoppel argument was held no merit. Appellees argued the father should not be given prospective relief of the child support obligation because he failed to timely petition for relief. The Court held the father “had no concrete evidence to form a basis for Rule 60.02 relief until the DNA test indicated that he was not the father.” *Id.* at *10. The Court affirmed the trial court’s decision to relieve the father of future support.

See also:

Lawson v. O’Malley, No. W2003-00080-COA-R3-JV , 2004 Tenn. App. LEXIS 256, (Tenn. Ct. App. April 22, 2004).

State ex rel. Whitehead v. Thompson, 01A01-9511-CH-00538, 1997 Tenn. App. LEXIS 860 (Tenn. Ct. App. December 5, 1997).

5.04 Visitation

In re B.E.D., No. W2003-02026-COA-R3-JV, 2004 Tenn. App. LEXIS 177 (Tenn. Ct. App. March 22, 2004). Custodial parent appealed the trial court's decision to award visitation to the child's adult half-sister. Western Section vacated the order and held the adult half-sister had **no statutory claim to visitation**. Because no statutory claim existed the question of whether a showing of substantial harm is required is moot.

5.05 Placement Issues

State Dep't of Children's Servs. v. E.G.P., No. E2003-00433-COA-R3-CV, 2003 Tenn. App. LEXIS 658 (Tenn. Ct. App. September 12, 2003). DCS challenged the Juvenile Court Judge's authority to order a placement for a sixteen-year-old mother and her two and one-half-year-old child. Time constraints were imposed upon DCS in terms of placement by the Court and DCS alleged in their appeal that the Juvenile Court lacked jurisdiction to adjudicate a placement. The Eastern Section held: "(t)he juvenile court cannot usurp the properly exercised functions of the DCS. Any action, not wholly discretionary, taken by DCS may be subject to judicial review in accordance with established procedure, but **initial determinations** respecting placements are the responsibility and prerogative of the Agency." *Id.*, at 8-9 (emphasis added).

But see T.C.A. § 37-1-129(e) as amended July 1, 2004, and the federal regulation, 45 CFR 1356.21 (g)(3).

Editors Note: The amendment to T.C.A. § 37-1-129(e) does not appear to allow the court to order a specific placement. However, pursuant to the federal regulation, 45 CFR 1356.21 (g)(3), 65 FR 4020 (1/25/00), it appears the juvenile court does have the authority to order a particular placement if an evidentiary hearing is held and all relevant testimony is allowed, including that of the Department. See also, Debra Ratterman Baker, Et Al., American Bar Association, *Making Sense Of The Asfa Regulations: A Roadmap For Effective Implementation* (Diane Boyd Rauber, Esq., ed., 2001).

T.C.A. §§ 37-1-129(e) does not limit the court's role in examining the goal for the child and assuring the responsibilities of the plan and the placement choice further the attainment of the goal. It is the court's duty to assure all parts of the plan are in the best interest of the child, including the appropriateness of a particular placement.

By virtue of its jurisdiction over the permanency plan, the court may convene an evidentiary hearing at any time an issue is raised concerning the plan. The court may hold a hearing to determine that the child's needs are being met in a manner consistent with those identified in the plan. For example, foster home placement may be inappropriate for a child whose needs are identified as in-patient drug treatment or sexual perpetrator treatment.

5.06 Challenging Constitutionality of Statute

In re Adoption Of Female Child, E.N.R. 42 S.W.3d 26 (Tenn. 2001) Father challenged the constitutionality T.C.A. § 36-1-113 (g)(6) and T.C.A. § 36-1-113(c)(2). He raised the constitutional challenge for the first time in closing argument at the termination of parental rights trial. The Supreme Court found the trial court did not affirmatively decide the issue of constitutionality. **The Court held the father failed to timely raise a challenge to the constitutionality of the two statutes. Therefore, his challenge was waived except to the extent the statutes were clearly or blatantly unconstitutional and**

held they were not. In addition, the Court found the issue was compounded by the fact that the Attorney General was notified of the constitutional challenge as required by statute and rule.

5.07 Appellate Costs

Tenn. Dep't of Children's Servs. v. R.G.T. No. E2002-02804-COA-R3-JV, 2003 Tenn. App. LEXIS 408, (Tenn. Ct. App. May 30, 2003). Permission to appeal denied. Father filed a motion in the Court of Appeals requesting any costs that would be taxed to him be waived. **Eastern Section agreed to waive the appellate costs.**

PART III: RESOURCES FOR ADVOCATES

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PRACTICE TIPS

- 1) Review Sup. Ct. Rule 40: Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.
- 2) Begin with a thorough interview. LISTEN. Do another interview after you have reviewed the court file to cover what is in the file.
- 3) Go to the court and get a copy of the file.
- 4) Don't assume that the current file is the only one. Ask for all of them. Previous proceedings may be instructive.
- 5) Make your own copies. You could miss a post-it note or the back of a sheet with important information that a court employee won't think to copy.
- 6) Sometimes clerks talk. When you mention your client(s)' name, listen and observe.
- 7) Review all of the records you get from every source, and match and cross-reference. There may be allegations which are unsupported; e.g., the mere repetition of allegations from one service provider to another without verification.
- 8) Read "Ten Tips for Lawyers at the Interdisciplinary Meeting" in Jean Peters' Representing Children in Child Protective Proceedings, Lexis Law Publishing, 1997.
- 9) Learn about child development. What do kids understand/ mean at different stages in their development? Can a three year old lie? What are the limits of leading in an examination of a child? Be prepared to cross-examine experts or contest expert qualifications.
- 10) Always get the tape, not just the transcript. (This generally refers to the audiotape. There is not a lot of videotaping done anymore).
- 11) Do pretrial discovery. Talk to the child, parents, etc. even if you have to take a deposition, especially if the child is going to testify.
- 12) Know the judge and the court. How informal is it? Stay awake and take your cues. Is the court most alert in the morning? More amenable to what you want right before lunch?
- 13) Explore the motivations of the foster parents. Are they anxious to adopt? Could that be affecting their perspective on children's visits with their natural parents?
- 14) On appeals: Consider the Circuit Court you will be in and structure your appeals policy accordingly. Is it worth it to take that issue up?
- 15) Talk to **all** of the service providers. If you are representing the parents, your perspective can soften their stance toward your clients. They may only have heard one side.

- 16) If caseworkers will talk to you, LISTEN. Look at the case through their eyes.

For representatives of parents, especially:

- 17) Be ready to offer alternatives from the get go. If there are acceptable family members for temporary placement, have them ready at the earliest possible hearing, screened and with references. Caseworkers will not rush to do this.
- 18) If anyone is at the hearing besides the parents, have them sworn as witnesses and invoke the Rule to exclude them from hearing other testimony before they are called. Do this even if the other side says they are not going to call them. Tell the court that you might. Juvenile Court proceedings can be informal, and a late question from the judge to someone who has hitherto been a spectator can be answered with devastating results.
- 19) Address reasonable visitation for the parents as soon as possible. Parents' ability to stick it out through the process is enhanced by maximizing access to their kids.
- 20) Get the first visit set up before any court proceeding is held, even if it's right before court, at the courthouse.
- 21) Push for needed referrals as soon as possible. Ask the court for a time limit for referrals to be completed. This is especially important for things like parenting classes and psychiatric or psychological evaluations. The parents can't get started on reuniting the family without these, but if not pushed to follow through, the State can take 6 to 8 weeks or more to get going. Especially with young children, 6 to 8 weeks is a long time.
- 22) Mental illness and substance abuse are uphill battles all the way. Not only are treatment options limited, but anyone with experience will tell you that more than six months of treatment is needed and that relapses are common. Yet the new federal time limits, embraced by the state, are extremely challenging in these cases. And the cases on termination of parental rights for the mentally ill, etc. are not encouraging.
- 23) Get the other agencies to submit their reports to all concerned before the hearing. These should be reviewed by an attorney for the agency so there is no hearsay/speculation. The reports should be facts and observations **only**.
- 24) Be aware that caseworkers and CASA workers may not be well-trained. Be prepared to do a vigorous cross examination and expose problems with the "expert" opinions offered.
- 25) Submit your own findings and recommendations to the court.

DEPARTMENT OF CHILDREN'S SERVICES - FLEXIBLE FUNDS

Each funding stream is listed below with an explanation of the target population as defined by the goals of the children, items covered by the funds, how to access the funds, any restrictions on use of the funds, and who is responsible for final decisions. To the greatest extent possible, the goal of the child will drive the choice of funding streams. There are some exceptions to this and those are explained below.

1. Time Limited Reunification

Goal of Child	Children receiving these funds must have a goal of reunification or a dual goal that includes reunification.
Purpose	To achieve reunification by providing treatment and intervention services to children, youth, and families where the children are: 1) in state custody for less than 15 months, and 2) currently in placement. (NOTE: Children with a goal of reunification who are residing in kinship foster care homes are considered to be "in placement" and are eligible for these funds if they meet all other requirements.)
Examples of Proper Use of this Fund	<p>These services may be provided for parents or children.</p> <ul style="list-style-type: none"> • Non-TennCare covered individual, group, and family counseling • Non-TennCare covered in-patient, residential, or outpatient substance abuse treatment • Non-TennCare covered services such as counseling, homemaker, youth services, parent education services, and child care/sitter services. • Assistance to address domestic violence including child abuse • Transportation for children or parents to obtain any of the services • Therapeutic Visitation Services • Transportation services for parents or children to facilitate visitation for parents, children, and siblings.
What you CANNOT Use this Money for	<p>You may not use these funds to purchase services that are available through TennCare or other insurance.</p> <p>You may not use these funds to purchase tangible goods or services like rent, utilities, or furniture.</p> <p>All medically necessary services should be provided through TennCare for TennCare eligible children and families or through the Medical DPA (see below).</p> <p>You may not use these funds for children who are at home on a 30/90 day trial home visit.</p>
Special Conditions that Must be Met	<p>The goal stated in the permanency plan must be reunification, or there must be a dual goal that includes reunification.</p> <p>The maximum funding for each child is \$3,000 per fiscal year unless special circumstances exist.</p> <p>Children who receive or benefit from these services must be in out-of-home placement. This can include a relative or kinship placement as long as the goal is reunification.</p> <p>Children must be in the first 15 months of the current custody episode.</p>

Who is Responsible?	<ul style="list-style-type: none"> • The DCS case management staff is responsible for identifying the needed services for the family. • The Regional Administrator or his/her designee is responsible for granting waivers to the \$3,000 limit. • The CSA Executive Director is responsible for managing the funds and assuring that all purchases are allowable under the regulations.
How to Access	Through the Community Services Agency. DCS staffs send a referral form to the CSA.

2. Child Welfare League of America (CWLA) Reunification

Goal of Child	Children receiving these funds must have a goal of reunification or a dual goal that includes reunification.
Purpose	To achieve reunification by providing services and goods for children in state custody. These funds may be used for children who have been in care less than 15 months if Time Limited Reunification is not available to them, or for children who have been in custody longer than 15 months. These funds may be used for custodial children who are at home on a 30/90 day trial home visit.
Examples of Proper Use of this Fund	<ul style="list-style-type: none"> • May purchase all services as described above in the “time limited reunification” caption. • May purchase tangible goods and services that meet basic needs, e.g. rent, food, clothing, transportation, etc. • May purchase in-home services to maintain home placements for custodial children who have been returned to the home, including those who are at home for a 30/90-day trial home visit.
What you CANNOT use this money for	<p>You may not use the money to make purchases for non-custodial children. After the Department is relieved of custody, then purchased services must be bought through the FSS program.</p> <p>You may not use these funds to purchase goods and services for which there is another funding source available.</p> <p>If a given situation would qualify for both Time Limited Reunification and Custodial Flex funds, then spend Time Limited Reunification dollars first.</p> <p>All medically necessary services should be provided through TennCare for TennCare eligible children and families or through the Medical DPA (see below).</p>
Special Conditions that Must Be Met	<p>The child must have a goal of reunification.</p> <p>Expenditures for services may not exceed \$3,000 per child, per fiscal year unless the DCS Regional Administrator or his/her designee grants a waiver to that amount. Expenditures for any one tangible good or “basic need” type of payment may not exceed \$750, unless a waiver is provided by the Regional Administrator or his/her designee.</p>
Who is responsible?	<ul style="list-style-type: none"> • The DCS case management staff are responsible for identifying the needed services for the family. • The Regional Administrator is responsible for granting waivers to the funding limits. • The CSA Executive Director is responsible for managing the funds and assuring that all purchases are allowable under the regulations.
How to Access	Through the Community Services Agency. DCS staffs send a service authorization to the CSA.

3. Adoption Promotions, Recruitment, and Placement

Goal of Child	The child must have a goal of adoption or a dual goal of adoption and some other type of permanent living arrangement such as independent living or permanent foster care. (NOTE: If there is a dual goal of reunification and adoption then reunification will be the primary goal and the TLR or CWLA Reunification funds must be used.)
Purpose	To provide services that will make it possible for children in state custody or guardianship to be adopted, when that goal is in the best interest of the child.
Examples of Proper Use of this Fund	<ul style="list-style-type: none"> • May purchase services that a child needs in order to pursue the goal of adoption. • Can fund services that enable DCS to pursue termination of parental rights such as diligent searches, preparation of termination referrals, and pre-adoptive child profile. • Child specific recruitment efforts. • General recruitment for Adoptive Parents. • Counseling and services geared toward preparation for adoption. (NOTE: Intensive medical and treatment services to stabilize a child with a goal of adoption shall be paid through the Medical DPA.)
What You CANNOT Use this Money for	You may not use these funds to purchase services for children who do not have a goal of adoption, or who are not identified as being appropriate for the adoptive process.
Special Conditions that Must Be Met	<p>For child specific services, there is a limit of \$3,000 per child, unless a waiver is obtained from the Regional Administrator or his/her designee.</p> <p>There is no cap on expenditures for general recruitment, other than the limits of the regional allocation.</p>
Who is Responsible for Final Decisions?	<ul style="list-style-type: none"> • The DCS case management staff is responsible for identifying the needed services for the family. • The Regional Administrator or his/ her designee is responsible for granting waivers to the \$3,000 limit. • The CSA Executive Director is responsible for managing the funds and assuring that all purchases are allowable under the regulations.
How to Access	Through the Community Services Agency. DCS staffs send a service authorization to the CSA.

4. Emergency Placement

Goal of Child	The child may have any goal to receive this service.
Purpose	To provide short term, emergency residential services for custodial children who are coming into care or transitioning to a new placement.
Examples of Proper Use of this Fund	Short term, up to 72-hour placement for a custodial youth in any licensed child care agency. The agency must be licensed but need not have a contractual relationship with the State of Tennessee.
What You CANNOT Use this Money for	<p>These funds should not be used to purchase a long-term or program placement.</p> <p>These funds may not be used to purchase placement in an unlicensed facility, an unlicensed foster home, or in an agency that has been placed on administrative probation by the Quality Assurance Division.</p>
Special Conditions	Children must be in state custody. (NOTE: Respite services for non-custodial children may be purchased through the FSS Flex Funds.)

Who is Responsible for Final Decisions?	<ul style="list-style-type: none"> • The Team Coordinator may grant a waiver for emergency placement funds to be used, for any one emergency placement episode, for a period of time longer than 72 hours but less than 7 calendar days. • The Regional Administrator must grant a waiver in order to use emergency placement funds for a child for more 7 days. If the emergency placement continues beyond 7 days, then the Regional Administrator must grant another waiver to re-authorize the continued use of these funds every 7 days, providing a copy of this waiver form to his/her Assistant Commissioner. Under no circumstances may a child continue in emergency placement status for longer than 30 days. • The CSA Executive Director is responsible for managing the funds and assuring that all purchases are allowable under the regulations.
How to Access	Through the Community Services Agency. DCS send a service authorization to the CSA.

5. Wraparound Medical Departmental Purchase Authority (DPA)

Goal of Child	Children with any goal may be served through this fund as long as there is no other funding source or fund available to the child.
Purpose	To meet needs of custodial children and some children who are subjects of a CPS investigation and for which there is no other resource. This fund is ALWAYS used to purchase initial and emergency clothing outlays, extraordinary foster parent travel, and respite for DCS foster parents. Beyond these items, this fund may be accessed for any other type of goods or services for which there is no other available funding.
Examples of Proper Use of this Fund	<ul style="list-style-type: none"> • Initial and emergency clothing outlays • Extraordinary foster parent travel. Extraordinary travel does not include normal, routine travel like taking a child to school, to a local medical visit, or to a local treatment provider. Extraordinary travel is excessive or exceptional travel like traveling 100 miles round trip for a medical visit. • Respite services for foster parents. • Other items for which there is no funding source such as interpreter services for a youth in a YDC or interpreter services needed in a child protective services investigation. • For children with a goal of adoption, emancipation, or permanent foster care this fund may purchase treatment/intervention services that maintain a current placement, prepare a child for another placement, or facilitate the child stepping down to a less restrictive setting.
What You CANNOT Use this Money for	Cannot use the funds for any other type of goods or services that could be paid through some other source.
Special Conditions that Must Be Met	<p>There is a \$750 limit on any one purchase for a child.</p> <p>Initial and Emergency clothing outlay may not exceed the amount stated in foster care policy without a waiver granted by the Regional Administrator or his/her designee.</p> <p>Prior approval of the Regional Administrator or his/her designee is required for treatment or intervention services.</p>

Who is Responsible for Final Decisions?	<p>The team leader may approve routine clothing purchases that do not exceed the stated limits, foster parent travel claims for extraordinary travel, and foster parent respite services.</p> <p>The Regional Administrator or his/her designee shall give written prior approval for purchases for treatment, intervention, or any other items not listed in the first paragraph.</p> <p>The Regional Administrator and his/her designee must provide a waiver for any purchase more than \$750.</p>
How to Access	<p>For clothing, extra-ordinary foster parent travel, foster care respite services, or CPS related services, the case manager obtains approval to obtain the goods or services from the Team Leader. After goods or services are obtained, the case manager submits the invoice with a standard claim form to Fiscal Services.</p> <p>For treatment/intervention services the case manager will acquire the prior approval of the team leader, team coordinator, and the Regional Administrator or his/her designee. After services are obtained, the case manager submits the invoice, a copy of the waiver form (if applicable), the RA/designee approval (if applicable), and a standard claim form to Director of Program Operations, in Central Office.</p>

6. Medical Departmental Purchase Authority (DPA) for Custodial and some Non-custodial Children and Families

Goal of Child:	Children receiving these funds may have any goal. Some may be non-custodial.
Purpose	To meet medical needs of custodial children that cannot be covered by insurance or TennCare. With verification that TennCare and insurance will not pay, this fund is to be used for payment of bills related to a medical or DSM-IV-TR diagnosis.
Examples of Proper Use of this Fund	<ul style="list-style-type: none"> • Medical device or therapeutic appliance not covered by TennCare • Psychological evaluations for children or parents as part of a child protective services investigation • Psychological evaluations for custodial children when TennCare and the Psychological Services contract are not available. • Any necessary medical procedure that TennCare will not cover • Medications that are not on the approved TennCare list. • Reimburses foster parents who had to purchase a prescription or a medical service for a child in an unusual or emergency situation. • Physical exams for children involved in a Child Protective Services investigation. • Intensive medical treatment services that are delivered to a child with a medical diagnosis or a DSM-IV diagnosis, and for which there is no other funding source. This category pertains to children with a goal of adoption, permanent foster care, or emancipation.
What You CANNOT Use this Money for	Cannot use this fund for items that TennCare or insurance covers, with the exception of forensic medical exams for child protective services investigations.

Special Conditions that Must be Met	There is a \$1,500 limit on any one purchase for a child. With the exception of CPS related exams, there must be justification for the inability of TennCare or other insurance to pay these costs.
Who is responsible for final decisions?	There must be prior approval by the Regional Administrator or his/her designee. No individual expenditure should exceed \$1,500 without a waiver granted by the Regional Administrator or his/her designee
How to Access	The case manager obtains the prior approval of the team leader, the team coordinator, the Regional Administrator or his/her designee before acquiring the service. After the service is provided or the goods secured, submit a Non TennCare Eligible Form, medical invoice, and a standard claim to Fiscal Services.

7. Psychological Service Contract

Goal of Child	Children receiving these services may have any goal.
Purpose	To identify or meet treatment needs through the purchase of evaluation and treatment services for youth or parents for whom there is no other funding source available
Examples of Proper Use of this Fund	<ul style="list-style-type: none"> • Purchase of psychological evaluation for a youth in detention or other hardware secure facility (who would be non TennCare eligible) • Purchase a psychological evaluation for a custodial child or his/her parent when TennCare or insurance has denied payment of this service. • May purchase group or individual therapy for youth for whom there is no other funding source.
What You CANNOT Use this Money for	To purchase psychological services that would be available through insurance or TennCare.
Special Conditions that Must be Met	None, other than there is no other available funding source
Who is Responsible for Final Decisions?	Regional Administrator is responsible for administration of the contract. The case manager must obtain prior approval of the DCS gatekeeper to gain access to these services.
How to Access	Each DCS Region has an allocation of these services. DCS in each region has a mechanism to gain access to these services. Ask your supervisor.

8. Family Support Services – Flexible Funds

Purpose	Provide funds to pay for tangible goods and services that meet basic needs of families with NON-CUSTODIAL children.
Objective:	To empower families to care for children safely within their homes and communities.
Examples of Proper Uses of this Fund	<ul style="list-style-type: none"> • Paying rent for a family • Paying utility bills • Pay for auto repair • Purchase a bed

Special Conditions that Must be Met	<p>The children must be NON-custodial.</p> <p>The funds may not be used to acquire equity in a property.</p> <p>The maximum amount of funding per child, per year, is \$750 unless certain exceptional circumstances exist. The CSA Executive Director may grant a waiver in these exceptional circumstances.</p>
What You CANNOT Use the Money for	You cannot use these funds to pay for goods and items for custodial children.
Who is Responsible for Final Decisions?	The CSA Executive Director grants waivers to the \$750 limit and is responsible for administering these funds according to the guidelines.
How to Access	Submit a request form to the Community Services Agency and CSA authorizes.

9. Purchased Services Available through Family Support Services Program

Purpose	Provides intervention and treatment services to children who are at imminent risk of state custody due to risk of child abuse/neglect, behavioral/treatment needs of the child, or family problems.
Objective:	To maintain children safely in their homes and communities.
Examples of Proper Use of Funds	<p>The funds may be used to purchase any of the following services for children or parents, where there is no other available funding source including private insurance and TennCare coverage:</p> <ul style="list-style-type: none"> • Intensive family preservation • Homemaker services • Non medically necessary drug/alcohol services • Child care/Sitter services • Electronic monitoring • Respite Services • Non-medically necessary counseling services • Youth services
What You CANNOT Use this Money for	<p>You may not use these funds to purchase goods and services for children in state custody.</p> <p>You may not use these funds to purchase medically necessary services for a TennCare eligible client.</p>
Special Consideration	<p>These services must be provided to children and families as an effort to achieve a specific goal in a written Plan of Action.</p> <p>Children and families receiving these services must also be served by a CSA or a DCS case manager who monitors and documents the provision of the services by the vendor.</p> <p>There is a spending limit of \$3,000 per child, per fiscal year. The CSA Executive Director may waive this limit in special circumstances.</p>
Who is Responsible for Final Decisions?	CSA Executive Director may grant waivers and is responsible for the administration of the funds according to funding guidelines.
How to Access	Submit a request form to the Community Services Agency and CSA authorizes.

10. Additional Information

Psychological and psychosexual evaluations: The Child Protective Services staff should access the Medical DPA. The staff working with custodial children should first access TennCare. If that fails, use the Psychological Services contract. When the Psychological Services contract is exhausted, then these bills may be submitted to the Medical DPA.

Continued payment of services after the child leaves foster care: Services may be continued as needed though the funding stream must be changed to match the constraints of each fund. For example, if a treatment service was purchased for a child who had been in care less than 15 months and who continued to be in placement, the time limited funds may be used. If the child goes home on a 90-day trial home visit, the service may be continued but the funding stream must be changed to CWLA Reunification funds. If after the 90 day trial home visit, the child has left state custody and still requires the treatment service, a family support services (FFS) case should be opened and FSS funds used.

**DEPARTMENT OF CHILDREN'S SERVICES –
HEALTH UNIT STAFF (10/04)**

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Important TennCare Telephone & Fax Numbers, Resources & Tips Fall 2002

Telephone and Fax Numbers

If you are having problems or need help, call the appropriate number below.

Most office hours are from 8:00 a.m. to 4:30 p.m. CDT, Monday through Friday.

TennCare Bureau Hot Line:

1-800-669-1851

Middle TN Number: (615) 741-4800

Re-Application:

1-800-525-0344

To find out if you or your child is one of the 600,000 who must re-apply to keep their TennCare, or to find out when your letter was mailed, or when your 90-day deadline is.

(TIP: Do you need to find out if you have been cut off and when? It's easy to find out through TennCare's automated system. You need the social security number and date of birth. Then dial the Hotline # above. As soon as you hear the recording, press 1. When you hear the recording again, press 2, and when you hear it again, press 1. Try it. It's a great short cut.)

TennCare Appeals Solutions Unit:

1-800-878-3192

Fax for Medical Appeals: 1-888-345-5575

Fax for Administrative (Termination) Appeals:
(615) 248-6168 or 1-888-345-5575

TennCare Administrative Appeals

P.O. Box 22630, Nashville, TN 37202-2630

Tennessee Health Care Campaign:

1-800-280-8682

Middle TN Number: (615) 227-7500

Fax: (615) 227-7551

1106 Chapel Avenue

Nashville, TN 37206

TennCare Consumer Advocacy:

1-800-722-7474

Middle TN Number: (615) 313-9972

Info. about Re-Application: 1-800-525-0344

Fax: (615) 313-9242

P.O. Box 40136, Nashville, TN 37204-0136

Re-Application Standards

1. People should be able to call their local DHS office to make an appointment.
2. A person should be able to get an appointment no more than 2 weeks after you call.
3. People should be treated with respect.

Hispanic TennCare Line

¿Habla Usted Español?: 1-800-254-7568

Middle TN Number: (615) 227-7568

If these standards are not met, email

tgarr@thcc2.org

or call THCC: 1-800-280-8682

TennCare Partners Advocacy

(mental health):

1-800-758-1638

Middle TN Number: (615) 242-7339

2416 21st Avenue South, Nashville, TN 37212

Important Fact Sheets & Tools

**Available via email: tgarr@thcc2.org and
on our website: www.thcc2.org**

For those with CRG/TPG mental health diagnosis:

Fax ME packets to: (615) 253-3187; or

Mail to: TDMHDD

Office of Managed Care, Eligibility Unit

3rd Floor, Cordell Hull Bldg.

425 5th Avenue North, Nashville, TN 37243

1. DHS County Addresses and Phone Numbers
2. Eligibility Chart: TennCare Medicaid & Standard
3. Flow Chart for Redetermination & Enrollment
4. Medicare & TennCare Eligibility
5. Poverty Level Income Standard (PLIS), PowerPoint
6. Premium, Cost Sharing & Poverty Levels
7. Self-employment Income Calculation
8. SpendDown, PowerPoint
9. Telephone Numbers That Matter

TennCare Advocacy Line for

Hearing Impaired:

TDD Line: 1-800-772-7647

Middle TN Number: (615) 313-9240

TennCare Bureau:

(615) 741-0213

Fax: (615) 741-0882

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Rev. 10/20/04

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Hamilton County

**In Winchester, TN once a week.
(931) 924-1156 ext: 201

ADOPTION ASSISTANCE FACT SHEET
November '02**POLICY REFERENCES: 15.11 and 15.12****EFFECTIVE OCTOBER 1997**

There are 2 types of Adoption assistance, Active and Deferred. Active has monetary assistance beginning at the time of Adoptive placement; Deferred has no monetary assistance until the child's condition warrants it.

Active criteria:

1. Child has a severe physical or psychological condition diagnosed by a physician, psychologist or LCSW **or**
2. Child is part of a sibling group of 3 or more placed together at the same time in the same adoptive home **or**
3. Child is diagnosed HIV positive **or**
4. Child is of minority heritage and is age 5 or older **or**
5. Child is of Caucasian heritage is age 9 or older **or**
6. Child was physically abused, sexually abused or neglected to the legal standard of severe abuse.

Deferred criteria:

1. Child has a documented genetic background or birth family history indicating the potential for developing future physical and/or psychological problems **or**
 2. Child was documented drug and/or alcohol-exposed infant **or**
 3. Child has a history of 3 or more disrupted foster/adoptive placements.
- And** child has a high risk of developing severe medical or psychological problems in the future directly related to the eligibility criteria. This risk must be documented at the time of adoptive placement by a physician, psychiatrist, psychologist or LCSW.

DAILY MAINTENANCE PAYMENTS (BOARD RATES)

- Special Circumstances rate must be reapproved by the Adoption Services TC even if the child was receiving special circumstances foster care board rate.
- A sibling group rate of \$30/child/monthly is only available to foster families who are already receiving this sibling bonus as part of their foster care board rate.
- Negotiated board rates must be reapproved by Central Office even if the child was getting this rate in foster care. This rate request is first approved by a TC in Adoption Services and then submitted to Jane Chittick, Director of Adoption Services, Central Office.

RATE SCHEDULE EFFECTIVE 1-1-02**Regular Daily Rates:**

0-2 \$12.15
3-4 \$8.59
5-12 \$9.48
13+ \$13.94

Special Circumstances Daily Rates:

0-2 \$18.55
3-4 \$13.87
5-12 \$14.16
13+ \$18.73

Mental Retardation:

IQ 35-55 \$21.73
IQ less than 20-40 \$25.35
(allow for a 5 pt. variance)

- SSI/SSA/VA benefits are deducted from the approved Adoption Assistance rate. The child cannot receive these benefits and the full amount approved for Adoption Assistance.
- Non-recurring expenses: (1 time only payment) \$1500 per child generally pays for attorney fees, court costs and cost of the new adoptive birth certificate.
- Medical, Psychological, Dental and/or Hospital benefits must be related to the child's original diagnosis, which made the child eligible for Adoption Assistance. These services are eligible for payment only after the adoptive families private insurance and TnCare have denied coverage.
- Adoptive Assistance must be approved before the child's adoption is final.
- Adoption Assistance Agreements (contracts) must be approved every year.
- All children receiving Adoption Assistance are eligible until their 18th birthday. Some children are eligible longer depending upon the funding source of their Adoption Assistance.

FOR MORE INFORMATION CONTACT THE CENTER FOR ADOPTION AT 615-253-3289 OR 1-800-807-3228

SUMMARY OF THE BRIAN A. SETTLEMENT

General Principles of the Agreement

- All children should have the opportunity to grow up in a safe and nurturing environment.
- The state should make reasonable efforts to avoid foster care placement.
- Family ties should be maintained and children should be placed with relatives when possible.
- Foster care is temporary and children should be placed in a permanent home as quickly as possible.
- All children in need of welfare services should receive full and equal access to the best available services.
- Children should be in the least restrictive, most family-like setting possible, within close proximity to the home from which they were removed.
- Placements should meet the children's needs, services should address the trauma of foster care and the family problems that resulted in the removal.
- Families should participate in planning and decision-making.
- All parties in judicial proceedings should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized.
- The state shall provide monetary resources and documentation of the implementation of the agreement.

Definition of the Class of Children to Whom the Agreement Applies

- Includes all dependent and unruly children who are or will be in custody of the Department of Children's Services.
- Excludes delinquent youth in custody of the Department.

Regional Services

- A full range of community-based services shall be available in each region, including intensive family services for reunification transition period, intensive home-based crisis intervention services to prevent foster care disruption, and adoptive family intensive home-based crisis intervention services to prevent disruption. An independent expert shall conduct a statewide needs assessment of resources and placements to determine the need for new or different placements and services and where those are to be located. The needs assessment shall be completed by November 1, 2001 and updated annually.
- DCS shall maintain a statewide, regional and local program for recruitment of foster and adoptive homes.

Placement of Children

- Children shall be placed within a 75-mile radius of the home from which they are removed.
- Children shall not remain in emergency facilities for more than 30 days and shall not be placed in more than one shelter within any 12-month period.
- Children shall be placed in the least restrictive most home-like setting.
- Siblings shall be placed together. If a sibling group is separated at the initial placement, the case manager shall make immediate efforts to locate or recruit a family where they can be reunited.

- Children with the permanency goal of adoption shall be placed with a pre-adoptive family.
- Foster homes shall have a maximum three foster children and a maximum six total children. Sibling groups of six or more may be placed in the same foster home.
- Children under the age of six shall not be placed in a group home.
- Children shall not be placed in a residential treatment center or group setting with a capacity in excess of eight children.
- Children shall not be placed in a detention facility unless charged with a delinquent offense or ordered by court.
- Exceptions to the criteria for placements may be made for children with exceptional needs.
- Children of appropriate age shall have access to a full range of independent living services.
- A resource management unit shall train staff on placement issues.

Educational/Medical/Psychological Needs

- Children shall be placed in community schools and have access to appropriate education, including special education services.
- All “in house” schools shall be evaluated, including schools in group, residential, and institutional facilities to assure access to appropriate educational services.
- An education specialist and a lawyer specializing in representing children’s educational needs shall be assigned to each of the twelve regions.
- Children shall receive an assessment including a medical evaluation and, if indicated, a psychological evaluation prior to or within 30 days of placement in custody.
- A medical director shall be hired.

Face to Face Contact Between Case Managers and Children

- Children shall be visited by the case manager as frequently as necessary to assure the child’s adjustment to the placement, that services are being received, and to address needs that are not being met
- At initial or new placements, the case manager must have a minimum of six contacts in first eight weeks, with three visits at the child’s placement. During the next eight weeks, the case manager shall visit once every two weeks, and twice a month thereafter
- Private contract agency caseworkers are likewise required to visit children in their placements.

Planning for Children

- A family conferencing meeting shall occur within seven days of custody between the case manager, parent(s) or guardian(s) and the child, if twelve years old or older. The purpose of the meeting is to discuss the problems that necessitated custody, determine the appropriateness of the child’s placement, identify possible relative placements, set visitation between the child and parent, begin an assessment of needs of child and family, arrange a schedule of contacts between the parents and case manager and begin a diligent search for absent parent(s).
- A permanency plan staffing shall occur within fifteen days of custody. The staffing shall be attended by the case manager, team leader, private agency contract worker, parent(s) or guardian(s), the child, if twelve years old or older, foster parent(s), guardian ad litem, CASA and the parent’s attorney. All reasonable efforts shall be made to enable the parents and foster parents to attend, including scheduling the staffing at a convenient time and arranging for child

care and transportation. The purpose of the staffing is to discuss the problems that necessitated custody, identify changes and services needed for the parents for reunification to occur, determine the appropriateness of the child's placement, schedule and determine the reasonable efforts needed to allow visitation between the child and parent, arrange a schedule of contacts between the parents and case manager and begin a diligent search for absent parent(s).

- In addition to the required court reviews, foster care review board hearings and the permanency hearing, DCS shall review all permanency plans of children at 6, 12, 15, 21 and 24 months of custody. The plan shall be reviewed every 3 months when the child is in custody for 2 or more years. The review shall include the case manager, team leader, private agency contract worker, parent(s), foster parent(s) (unless their attendance would be inappropriate), the child if twelve years old or older, guardian ad litem, CASA and parent's attorney. All reviews shall be scheduled to facilitate attendance by parents and child and shall be offered to be rescheduled if inconvenient, or assistance offered for childcare and transportation.
- Children may have concurrent goals.
- Children with the goal of reunification after twelve and fifteen months must be reviewed, documentation must show compelling reasons why child cannot be returned home within specified and reasonable time period, and additional services required must be identified
- Children may have a goal of relative placement if the relative is willing to assume long-term responsibility, has legitimate reasons for not wanting to adopt and it is in the best interest of the child. There must be a long-term placement agreement signed by the relative and DCS.
- Children must be fifteen or older to have a goal of permanent foster care/planned permanent living arrangement. The reasonable efforts made to return the child home, place with a relative or placed for adoption must be documented in the record.
- Children must be sixteen years or older to have a goal of independent living. (Editors note: this is not a goal allowed under ASFA but is a skill that age-appropriate children should receive.)

Parent-Child and Sibling Visitation

- Children with a goal of reunification must have parent-child visits in homelike settings. Parent-child visits start immediately after the child has entered foster care and occur, at a minimum, every two weeks for no less than one hour.
- Siblings who are not placed together shall have sibling visitation in the parent's home, foster home or the most homelike setting available at a minimum of once a month for an hour or more.

Discharge Planning for Children Who Return Home or Placed with Relative

- A discharge staffing shall be held for all children who return home or are placed with a relative to determine services necessary to ensure the child's safety and stability. The staffing shall be attended by the case manager, team leader, private agency contract worker, parent(s) or relative assuming custody, foster parent(s) (unless their attendance would be inappropriate), the child if twelve years old or older, guardian ad litem, CASA and parent's attorney.
- A 90-day trial home visit shall be recommended to the court. The case manager shall visit the child three times the first 30 days and two times per month the remaining 60 days. The case manager shall contact service providers and visit the school at least once per month.
- A final discharge staffing, including the case manager, child and parent or relative, shall be held to determine the appropriateness of final discharge.

The Goal of Adoption

- Adoption process of seeking and securing an adoptive home shall begin as soon as the child's goal becomes adoption. A process shall be developed for making legal risk placements.
- A petition to terminate parental rights shall be filed within 60 days of the goal being changed to adoption.
- Cases must be transferred to the adoption unit.
- Children who have not been placed for adoption within three months after being legally freed for adoption must be reviewed by a specialized adoption team (Adoption SWAT Team).
- Children who have not been placed for adoption within six months of being legally freed for adoption shall be referred to a private agency with success in obtaining adoptive homes.

Staff Qualifications and Caseload Caps

- A CM 1 shall have a maximum caseload of a fifteen children. A bachelor's degree is required and a Social Work degree is preferred.
- A CM 2 shall have a maximum caseload of twenty children. A CM2 must be promoted from a CM 1 or have one year of field experience.
- A CM 3 shall have a maximum caseload of twenty children. A CM3 must be promoted from a CM 2 or have two years of field experience.
- An adoption CM shall have a maximum caseload of twelve children.

Staff Training

- Director of Training: Donna Johnson
- Regional training units
- Comprehensive child welfare training and retraining with identical training for contract agencies

Disparate Treatment of African American Children

- An independent expert shall conduct a statewide evaluation of the disparities in placement, services and treatment of African American children and their families.
- A report and recommendations shall be issued.

Technical Assistance Committee (TAC)

- Child welfare neutral experts.
- Consult and advise DCS.
- Provide guidance and leadership.

Quality Assurance Unit

- Assess reports of abuse and neglect of children in foster care.
- Establish a statewide-computerized information system.
- Provide periodic reports on issues addressed in the agreement.
- Conduct specialized case record reviews

Outcome and Performance Measures

- Outcomes will be measured in three time periods over five years to determine compliance with performance indicators.
- The required outcome is a foster care system that protects each child and allows each child to achieve permanency as quickly as possible.

Brian A. Implementation Monitors

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INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN ACT (ICPC)**REGULATION NUMBER 7
OUT OF STATE PLACEMENT OF CHILDREN**

When a court decides that priority placement of a child from one state into another state is necessary it must make the finding in a court order. A court may be requested to make this finding, it may initiate the motion itself, or it may give court approval to an existing finding. The order should include the name, address, telephone number, and, if available the FAX number of the judge and the court.

A court order stating that a child is entitled to a priority placement is not valid unless it contains an express finding that one or more of the following circumstances apply to the particular case and explains the facts on which it bases its finding:

- The person with whom a child is to be placed is a relative¹ belonging to the class of persons who, according to Article VIII (a) of the Interstate Compact on the Placement of Children, can receive a child from a person belonging to such a class without complying with the Interstate Compact on the Placement of Children and the child is either:
 - under two years of age;
 - in an emergency shelter; or
 - has spent a substantial amount of time in the home of a proposed placement recipient.
- The Compact Administrator in the receiving state has had a properly completed Interstate Compact Application Request to Place a Child (ICPC-100A) and the supporting documentation for 30 business days but the sending agency has not received a notice pursuant to Article III (d) of the Interstate Compact on the Placement of Children determining whether the child may or may not be placed.

Procedures and time lines:

The following are procedures and time lines for priority placements:

- Within two (2) business days, the court sends its order for priority placement to the county DCS.
- Within three (3) business days, DCS, at the court's request, transmits to the Tennessee's Compact Administrator, two documents. These include a signed court order and a completed form: Interstate Compact Request Application for the Placement of Children (ICPC-100A) and supporting documentation pursuant to Article III of the Interstate Compact for the Placement of Children.
- In no more than two (2) business days upon receiving the above information, Tennessee's Compact Administrator transmits to the Compact Administrator in the receiving state the priority request and its accompanying documentation. He or she must include a notice that the

¹ Relative is defined as parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian. ICPC Article VIII(a)

request for placement must have priority processing. The Compact Administrator who sends the information shall transmit it by overnight mail together with a cover notice calling attention to the priority status of the request. ·

- In no more than 20 business days from the time that the Compact Administrator received the priority request by overnight mail, he or she should make a determination pursuant to Article III (d) of the Interstate Compact for the Placement of Children. He or she should immediately send by FAX to the Compact Administrator in the Tennessee the completed form titled: Interstate Compact Application Request to Place a Child (ICPC-100A.)
- If the Compact Administrator in the receiving state fails to complete the above action within the 20-day time period, the receiving state shall be deemed out of compliance with the Interstate Compact on the Placement of Children. In such a case, the Tennessee court that made the priority order may inform an appropriate court in the receiving state of the non-compliance, provide it with relevant documentation, and request its assistance. The court whose assistance has been requested, shall render such assistance within its jurisdiction and authority. This may include making appropriate orders for the purpose of complying with this Regulation and the Interstate Compact on the Placement of Children.

The foregoing does not apply if:

- 1) Within two (2) business days of receiving the Interstate Compact Request Application for the Placement of Children, the Compact Administrator in the receiving state decides that the documentation that he or she requested is substantially insufficient, specifies that additional information is needed and requests the additional information from DCS. He or she shall request the information by FAX or telephone when FAX is not available. ·
 - 2) Within two (2) business days of receiving the priority placement request, the Compact Administrator decides that the information is insufficient and notifies the Compact Administrator in Tennessee that more information is needed. Such a notice shall explain in detail what further information is needed. In such situations, the 20 business day period that the Compact Administrator has to complete an action shall be calculated from the date the Compact Administrator in the receiving state obtained the requested information.
 - 3) In cases where the court is not the sending agency, the sending agency is responsible to keep the state court that issued the priority order informed of the status of the priority request.
- Time periods in this regulation may be modified with a written agreement between the Tennessee court that made the priority order, DCS, and the Compact Administrators from Tennessee and receiving states. Any such modifications shall apply only to the single case to which it is addressed.
 - To meet its obligations under the Interstate Compact on the Placement of Children, a state and its local agencies should act as quickly and give as much attention to hardship cases between different states as hardship cases within their own state. If, in so doing, a Compact Administrator finds that extraordinary circumstances make it impossible for the state and its

local agencies to comply with the time requirements set forth in this regulation, the state may be excused from strict compliance. However, the Compact Administrator in the receiving state shall, within two (2) business days of determining the state's inability to comply, notify by FAX the Compact Administrator in the sending state of its inability to comply and set forth the date on or before which it will complete action. The notice shall contain a full identification and explanation of the extraordinary circumstances that are delaying compliance.

- Unless otherwise required or allowed by this regulation, all transmittals of documents or other written documents shall be by overnight express mail carrier services. Words and phrases used in this regulation have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children.

POWER OF ATTORNEY FOR CARE OF A MINOR CHILD ACT

By: Susan L. Brooks, Professor, Vanderbilt University School of Law

Tennessee has a new law of great interest to families facing temporary hardships. It is called the “Power of Attorney for Care of a Minor Child Act,” and was signed by Governor Bredesen on April 28, 2003. Currently, it can be found at Public Chapter 71, and it will be codified as §34-6-301 et seq.

The law came about, in part, as a direct result of the Statewide Kinship Summit, which was held in November of 2001. Over 100 grandparents raising grandchildren and other relative caregivers, state agency personnel, legislators, judicial officers, attorneys, along with other concerned citizens met over two days. A priority identified at the summit was the need to establish authority for relative caregivers to enroll a child in school or to obtain medical attention without having to file a petition in court in situations in which the family has agreed for the relative to care for the child.

Very often, a parent will agree to place a child temporarily with a relative on a short-term basis, for medical or other hardship-related reasons. Prior to this law, even if everyone in the family was in agreement as to the temporary placement of the child with the relative, that relative would have had to go to a court and file a petition for custody, simply to be able to enroll the child in school or to obtain medical treatment for the child. Such “lawsuits” created unnecessary stress within otherwise harmonious families. Family members essentially had to sue each other in order to obtain the legal documentation that was required to demonstrate they had authority simply to enroll the child in school or obtain medical attention for the child. Having to resort to this sort of drastic, adversarial action is costly (financially and otherwise), and also does not make sense when all family members are in agreement regarding the temporary arrangement.

These types of matters also placed a considerable strain on courts that were already dealing with too many cases and too little resources. Courts previously were forced to schedule judicial time and to administer the paper work necessary to process these cases. Using the courts’ precious resources and docket time in this manner was costly and inefficient from their standpoint as well.

In the end, the law was a product not only of the efforts of kinship care advocates, but also of a unique level of collaboration and cooperation by the Department of Education, the School Board Association, the Tennessee Secondary School Athletic Association, and the Department of Children’s Services. Additional support was provided by the AARP, the Administrative Office of the Courts, the Tennessee Council of Juvenile and Family Court Judges, and the Tennessee Bar Association. Moreover, excellent leadership was provided by the law’s legislative sponsors, both of whom happen to be lawyers: Representative Joe Fowlkes, and Senator Larry Trail.

As enacted, the new law includes, but is not limited to family members. Parents can transfer the temporary power of attorney to any adult, as long as all the adults involved with the child are in agreement.

The power of attorney can be executed using a simple form that is available at all offices of the Department of Children’s Services. It will also soon be available on the web site of the AARP in Tennessee (www.aarp.org). A Spanish language version of the form and the revocation form is also available.

Nevertheless, it should be understood that transferring the power of attorney for these limited purposes does not in any way confer custody on the relative caregiver. Parties seeking legal custody still need to go through the court process. The availability of the Power of Attorney also does not change any existing laws regarding the reporting or investigation of alleged child abuse and neglect, or the need to file petitions for custody under certain circumstances.

Numerous states have enacted similar legislation, involving medical and/or educational consent. They include: Arkansas, Mississippi, Missouri, Florida, Virginia, Louisiana, Oklahoma, and North Carolina.

This legislation will be useful, for example, if a single parent becomes acutely ill or is involved in a car accident and needs a period of hospitalization or rehabilitation, and a relative or close family friend agrees to care for her child during that period of time. The parties can create a Power of Attorney to allow that relative or friend to enroll the child in school or obtain medical care for the child without having to file a court action. Another instance would be if a parent who has ‘primary custody’ needs to undergo substance abuse or mental health treatment and, again, a family member or other trusted adult agrees to step forward and care for their child during that time. The parties can capture their agreement on the Power of Attorney form rather than having to go to court, which, in addition to the significant drawbacks mentioned above, often results in a time lag, during which the child misses out on his or her education.

From the school officials’ standpoint, this legislation is very useful in clarifying that they can look to the caregiver to sign the child’s report card, give permission for field trips and extra-curricular activities, or to act as a surrogate parent for purposes of the special education program, once they receive a properly executed Power of Attorney form. As long as school or medical personnel act in good faith in honoring the executed form, they are also shielded from liability. On the other hand, if parents or caregivers enter into this agreement for improper purposes or provide false information, the law provides legal remedies for school officials. They can recoup the ‘per pupil expenditure’ for the child in question, along with any fees or cost associated with having to pursue this remedy.

In sum, by allowing family members to use the “Power of Attorney” vehicle in these consensual situations, harmonious families can now solve their own short-term difficulties and children can obtain necessary medical and educational services without unduly burdening families or the courts. With the passage of this law, Tennessee has now firmly established its status as a national leader in providing informal alternatives to support extended families that are trying to act responsibly to make arrangements on their own to care for otherwise vulnerable children.

(See PART IV: FORMS, below for the Power of Attorney forms.)

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IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
_____	)	DOCKET NO. _____

**ORDER APPOINTING COUNSEL FOR INDIGENT PARTY IN DEPENDENCY OR
TERMINATION OF PARENTAL RIGHTS PROCEEDING**

It appears to the Court from the affidavit of indigency filed in this matter that the respondent, _____, is entitled to court-appointed counsel pursuant to Tenn. Sup. Ct. Rule 13, Sec. 1(d)(2).

It is therefore ordered that _____ is appointed as counsel for this respondent and is entitled to compensation at the hourly rate and subject to the maximum compensation set forth in Tenn. Sup. Ct. Rule 13, Sec. 2(d) and (e).

Appointed counsel shall represent the respondent in the following matters, unless relieved of this appointment by this court in a subsequent order:

- _____ from the filing of the dependency petition through disposition;
- _____ in post disposition, foster care review and permanency proceedings;
- _____ from the filing of the termination of parental rights petition to conclusion of trial;
- _____ on appeal to circuit court;
- _____ on appeal to the Tennessee Court of Appeals and/or Tennessee Supreme Court.

For purposes of compensation pursuant to Rule 13, each of the above is considered a separate proceeding. Counsel is entitled to submit separate claim forms for each proceeding and to be compensated up to the maximum amount allowed for each case as if it were the result of a separate appointment. Claims must be supported with a copy of the court order appointing counsel. Counsel is entitled to payment of expenses incident to appointed counsel's representation. Counsel is entitled to payment of specific expenses without prior approval as defined in Tenn. Sup. Ct. Rule 13, Sec. 4(e)(3). All other expenses must receive prior approval of this court and the director of the Administrative Office of the Courts in accordance with Tenn. Sup. Ct. Rule 13, Sec. 4(b).

Enter this the _____ day of _____, _____.

JUDGE/REFERE

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
	)	DOCKET NO.

ORDER APPOINTING GUARDIAN AD LITEM AND ALLOWING DISCOVERY

It appears to the Court that this matter involves a petition alleging dependency or termination of parental rights and that the appointment of a guardian ad litem for the above-named child(ren) is required, pursuant to T.C.A. § 37-1-149.

It is therefore ordered that _____ is hereby appointed as guardian ad litem for the above-named child(ren).

The guardian ad litem shall represent the child(ren) in the following matters, unless relieved of this appointment by this court in a subsequent order:

- _____ from the filing of the dependency petition through disposition;
 _____ from the filing of any subsequent, concurrent, or intervening petitions through disposition
 of those matters;
 _____ in post disposition, foster care review and permanency proceedings;
 _____ from the filing of the termination of parental rights petition to conclusion of trial;
 _____ on appeal to circuit court, Tennessee Court of Appeals and/or Tennessee Supreme Court.

For purposes of compensation pursuant to Rule 13, each of the above is considered a separate proceeding. Counsel is entitled to submit separate claim forms for each proceeding and to be compensated up to the maximum amount allowed for each case as if it were the result of a separate appointment. Claims must be supported with a copy of the court order appointing counsel. Counsel is entitled to payment of expenses incident to appointed counsel's representation. Counsel is entitled to payment of specific expenses without prior approval as defined in Tenn. Sup. Ct. Rule 13, Sec. 4(e)(3). All other expenses must receive prior approval of this court and the director of the Administrative Office of the Courts in accordance with Tenn. Sup. Ct. Rule 13, Sec. 4(b).

It is further ordered that, for the purpose of preparing for the adjudication of matters pending before the Court, the guardian ad litem shall have access to all documents and records pertaining to the child(ren), including, but not limited to, all records of the Department of Children's Services and any other medical, health care, educational and/or psychological/psychiatric records. The guardian ad litem is further authorized to interview any individuals having contact with or providing services to the child(ren). Work products of the office of the District Attorney, counsel for the Tennessee Department of Children's Services or the police department and the identity of persons making reports/complaints to the Tennessee Department of Children's Services are excluded from this order for discovery.

Enter this the _____ day of _____, _____:

JUDGE/REFEREE

UNIFORM AFFIDAVIT OF INDIGENCY

PART I

1. Full Name: _____
2. Social Security No.: _____
3. Any other names ever used _____
4. Address: _____
5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____
6. Are you working anywhere? Yes () No () Where? _____
7. How much do you make? _____ (weekly, monthly, etc.)
8. Birthdate: _____
9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)?
Yes () No () What is its value? _____ (weekly, monthly, etc.)
10. Do you own any property (house, car, bank acct., etc.):
Yes () No () What is its value? _____
11. Are you, or your family, going to be able to post your bond? Yes () No ()
12. Are you, or your family, going to hire a private attorney? Yes () No ()
13. Are you now in custody? Yes () No () If so, how long have you been in custody? _____
(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

14. Names & ages of all dependents:
_____ relationship _____
_____ relationship _____
_____ relationship _____
15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
Name _____
Address _____
16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
\$ _____ per _____ from _____
\$ _____ per _____ from _____
\$ _____ per _____ from _____
17. All money available to me from any source:
A. Cash _____
B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance _____

C. Debts owed me _____

D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.)

E. Other _____

18. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____ value \$ _____ amt. owed _____

_____ value \$ _____ amt. owed _____

_____ value \$ _____ amt. owed _____

19. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

_____ value \$ _____ amt. owed _____

_____ value \$ _____ amt. owed _____

20. All assets or property not already listed owned within the last six months or expected in the future:

_____ value \$ _____ amt. owed _____

_____ value \$ _____ amt. owed _____

21. The last income tax return I filed was for the year ____ and it reflected a net income of \$ _____.
I will file a copy of same within one week if required.

22. I am out of jail on bond of \$ _____ made by _____.

The money to make bond, \$ _____ was paid by _____.

PART III

23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

25. I understand that it is a Class A misdemeanor for which I can be sentenced to jail for up to 11 months 29days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This _____ day of _____, _____.

Defendant _____

Sworn to and Subscribed before me this ____ day of _____, _____.

Clerk

Judge

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER

)

THE AGE OF EIGHTEEN

IN THE MATTER OF

)

)

DOCKET NO. _____

MOTION FOR FUNDS FOR EXPERT WITNESS

Comes now counsel for the respondent, _____, and, pursuant to the court's determination of indigency of the respondent and Tenn. Sup. Ct. Rule 13, Sec. 4, moves this Honorable Court for an order authorizing funds to be paid by the Administrative Office of the Courts to hire an independent expert witness in the area of *[expert's area of expertise]*. The service to be provided is:

_____.

The person providing this service is *[name, address, qualifications and licensure status]*. (If the expert is not located within 150 miles of the court where the case is pending, an explanation must be included of the efforts made to obtain the services of a provider within 150 miles.)

Counsel would show that this service is necessary to the representation of the respondent because *[provide in detail the reason for requesting expert services]*.

This service will be provided *[date, time and location]*.

[Name of expert] has agreed to perform the requested services for a maximum of \$_____ and at a rate of \$_____ per hour.* An affidavit regarding the itemized cost of the services and a curriculum vita of _____ are attached hereto.

Counsel requests approval to hire *[expert's name]*, to be paid by funds of the Administrative Office of the Courts.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

* Attorney must review Tenn. Sup. Ct. Rule 13, Sec. 5(d) regarding the maximum allowable rates.

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
_____	)	DOCKET NO. _____

MOTION FOR REIMBURSEMENT OF COSTS OF TRIAL TRANSCRIPT*

Comes now counsel for the respondent, _____, and moves this Honorable Court for an order authorizing the reimbursement of costs of the trial transcript, not to exceed \$3.00 per page for the set of an original and one copy and \$.25 per page for each additional copy, to be paid by the Administrative Office of the Courts, pursuant to the court's determination of indigency of the respondent and Tenn. Sup. Ct. Rule 13, Sec. 4. The trial transcript will be transcribed by *court reporter's name and address*.

In support thereof, counsel would show that the trial in this matter was heard on _____ and that judgment was entered by this Court terminating the parental rights of the respondent. The respondent has filed a notice of appeal to the Court of Appeals, and requires and has a constitutional right to a transcript of the trial court proceedings to affect the appeal.

Wherefore, respondent requests this Court approve the authorization of costs of the trial transcript to be paid by the Administrative Office of the Courts.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

* A motion and order are not necessary in termination of parental rights cases involving the Department of Children's Services. See Tenn. Sup. Ct. Rule 13, Sec. 4(c).

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
_____	)	DOCKET NO: _____

ORDER AUTHORIZING REIMBURSEMENT OF COSTS OF TRIAL TRANSCRIPT*

This cause came on to be heard on the ____ day of _____, _____, before the Honorable _____, Judge/Referee of the Juvenile Court for _____ County, Tennessee, upon the Motion For Reimbursement of Costs of Trial Transcript filed by _____.

Upon statements of counsel and the entire record, the Court FINDS that the Respondent was indigent at the trial of this cause, continues to be indigent and shall proceed as such on appeal to the Court of Appeals. Further, the Court FINDS that the trial transcript is necessary to the effective representation of the respondent. Therefore, reimbursement for the costs of the trial transcript shall be authorized, pursuant to Tenn. Sup. Ct. Rule 13, Sec. 4.

It is therefore ORDERED, ADJUDGED and DECREED that the costs of the transcript of the trial of this matter heard on _____ shall be reimbursed by the Administrative Office of the Courts, pursuant to Tenn. Sup. Ct. Rule 13, Sec. 4. The estimated cost of the transcript is \$_____. Should the cost exceed this amount, counsel shall file another motion with the court requesting payment of the amount over and above the estimated cost.

It is further ORDERED that counsel for the Respondent shall forward this order immediately for approval to the Administrative Office of the Courts, Nashville City Center, Suite 600, 511 Union Street, Nashville, TN 37243 (facsimile 615-741-6285); Attention: Andrea Ayers.

Enter this the ____ day of _____, _____.

JUDGE/REFEREE

* A motion and order are not necessary in termination of parental rights cases involving the Department of Children's Services. See Tenn. Sup. Ct. Rule 13, Sec. 4(c).

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
_____	)	DOCKET NO: _____

MOTION TO DECLARE CASE COMPLEX AND/OR EXTENDED

Comes now, _____, court-appointed {guardian ad litem for the child(ren); counsel for mother or father of the minor child(ren); or attorney for the child(ren) appointed pursuant to Tenn. Sup. Ct. Rule 40}, and would respectfully request this Court to declare this matter complex and extended pursuant to Tenn. Sup. Ct. Rule 13, Sec. 2(e).

In support thereof, Movant would show this matter is complex and/or extended in that [list reasons why representation was complex and/or extended]:

Example 1: This matter involved allegations that the male child sexually abused his sister; evidence was obtained from another state and another county in Tennessee (name state or county and type of evidence); expert testimony was presented as to the children or parents (state type of expert testimony); extensive discovery was conducted; and/or, there existed the possibility of criminal incrimination of the mother.)

Example 2: The newborn infant had to be removed from his mother's custody at birth because of the risk to him based on the esophageal tear perpetrated on the child by the mother. (The mother was criminally indicted for felony child abuse and eventually pled guilty during the course of these proceedings.) The newborn is in a foster care home and the older child was in DCS custody, but subsequently placed with the paternal grandfather. This post-dispositional phase of the foster care case required two permanency hearings, three court reviews, and two extensive foster care review board hearing to try to persuade the Court and the Board that the mother was making progress on the plans. Counsel was required to intervene with the client's therapist to ensure that the client was "engaged" in the therapeutic process. The mother is just twenty-three years old, unskilled, uneducated, and the victim of domestic violence by both fathers. The case continued to involve extensive work to force the agency to provide visitation and services to the mother so that she could ultimately reunite with her children.

Example 3: This matter involved the second DCS contested adjudication of dependency neglect (initial proceeding resulted in mother maintaining custody), in which certain allegations were based upon drug abuse and mental health problems of the mother (indicate the nature of the mental health problems). The DCS petition maintained that the child was at risk of injury due to the mother's conditions. Consequently, this matter required review of voluminous medical, psychological and treatment records of the mother; eight court appearances over a nine month period of time including two days of dispositional hearings; and the consultation with several therapists, a psychiatrist, caseworkers, family members, witnesses, and psychologists.

Example 4: The representation involved several disruptions in foster homes, disruptions at school which required multiple conferences with the foster care parents, DCS workers and school officials and/or school liaisons. The representation also required some involvement and attention to delinquency charges where the child was represented by another court appointed attorney. In addition, the representation also

involved multiple court appearances (state number and time) involving DCS's failure to appropriately place the child.

WHEREFORE, Movant requests this Court declare this matter complex and extended pursuant to Tenn. Sup. Ct. Rule 13, Sec. 2(e).

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
)	
_____	)	DOCKET NO: _____

ORDER DECLARING CASE COMPLEX AND/OR EXTENDED

This cause came on to be heard the _____ day of _____, _____, before the Honorable _____, Judge of the Juvenile Court for _____ County, Tennessee, upon the Motion to Determine Case Complex and/or Extended, filed by the court-appointed {guardian ad litem for the child(ren); counsel for mother or father of the minor child(ren); or attorney for the child(ren) appointed pursuant to Tenn. Sup. Ct. Rule 40}.

Upon statements of counsel and the entire record, the Court FINDS that this matter is complex and/or extended pursuant to Tenn. Sup. Ct. Rule 13, Sec. 2(e).

It is therefore ORDERED, ADJUDGED AND DECREED that this matter is complex and/or extended pursuant to Supreme Court Rule 13, Sec. 2(e). **[List ALL the reasons why the representation is extended and/or complex as listed in the motion. See examples listed in the motion in this section on page 9.]**

Enter this the _____ day of _____, _____.

JUDGE

STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES

IN THE MATTER OF : _____ **File No.** _____

NOTICE OF PROTECTIVE CUSTODY

The child(ren) _____
_____ has (have) been taken into protective custody by the
Tennessee Department of Children's Services as allowed in T.C.A. ' 37-1-113 because the Department
has determined that the child(ren) is (are) at immediate risk of being severely harmed. The Social
Counselor will be filing this Notice and a Petition of Temporary Custody with the _____
County Juvenile Court on _____, the next judicial (business) day.

The parent or guardian has a right to a preliminary hearing before the Juvenile Court within three
judicial days of the date of this notice. The Juvenile Court will automatically set a preliminary hearing
date and will notify the parent or guardian. The parent or guardian may call the Children's Services
Division of Juvenile Court at _____, Monday through Friday, 8:00 a.m. to 4:30 p.m. if you have
any questions.

DATE

SOCIAL COUNSELOR

Phone # _____

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER
THE AGE OF EIGHTEEN

IN THE MATTER OF

)

)

)

)

DOCKET NO: _____

PETITION FOR TEMPORARY CUSTODY

Comes your Petitioner, _____, by and through its duly authorized representative,
_____, and respectfully states as follows:

I.

That _____, age _____, resides at _____,
in _____ County, Tennessee.

II.

That the name and address of the mother (or guardian) is _____.

III.

That the name and address of the father (or guardian) is _____.

IV.

[List facts justifying relief sought.]

V.

That there are not reasonable services available which can prevent or eliminate the necessity of the child's removal at the present time; and that there is no less drastic alternative to removal which can reasonably and adequately protect the child's health. It is contrary to the welfare of the child for the child to remain in the home because _____ [list facts showing it is contrary to the child's welfare to remain in the home]

VI.

That it is in the best interest of the child to be removed from his/her custodian and that the child be made a ward of this Court and that the Court award temporary legal custody to the Tennessee Department of Children's Services or appropriate relative placement.

PREMISES CONSIDERED, PETITIONER PRAYS:

1. That _____ be served with a copy of this Petition and be summoned to answer in conformity with the law.

2. That _____ be served with a copy of this Petition and be summoned to answer in conformity with the law.

3. That this cause be set for hearing forthwith.

4. That at hearing of this cause, the Court find that _____ is a dependent and neglected child as defined by law; that said child be made a ward of this Court; that temporary legal custody of the child be awarded to the State of Tennessee Department of Children's Services with the authority to consent to any ordinary medical, surgical, or institutional care.

5. That a Guardian ad Litem be appointed to represent the child.

6. That reasonable child support be awarded.

7. For such other, further, and general relief as may be necessary.

OATH

STATE OF TENNESSEE, COUNTY OF _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER
THE AGE OF EIGHTEEN

IN THE MATTER OF

)

)

)

DOCKET NO: _____

AFFIDAVIT OF REASONABLE EFFORTS

First being duly sworn, Affiant would state:

I am _____, a _____ with the Tennessee Department of Children's Services.

I would state that the following information is true and correct to the best of my information and belief [Affiant answers the following questions]:

1. *Why is removal necessary to protect this child or children?*
2. *What are the specific risks necessitating removal of the child(ren)?*
3. *What specific services are necessary to allow the child(ren) to remain in the home or to be returned to the home?*
4. *What services have been provided to assist the family and child(ren) so as to prevent removal or to reunify the family?*
5. *Has the Tennessee Department of Children's Services had the opportunity to provide services to the family and child(ren) and, if not, what are the specific reasons why services could not have been provided?*

Further, Affiant saith not.

TDCS Representative

Address _____

Phone # _____

State of Tennessee

County of _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Affidavit are true to the best of my knowledge, information, and belief.

Sworn and subscribed before me on this the _____ day of _____, 19____

Notary Public

My commission expires: _____

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER
THE AGE OF EIGHTEEN

IN THE MATTER OF

)

)

)

DOCKET NO: _____

PROTECTIVE CUSTODY ORDER

It appears to the Court from:

☐ the sworn allegations of the petition filed by _____ in the this matter.

☐ the sworn statements of _____

that there is probable cause to believe that the above-named child(ren), is/are a dependent and neglected child(ren) within the meaning of the law, that the child(ren) is/are subject to an immediate threat to the child(ren)'s health and safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, and there is no less drastic alternative to removal available which could reasonably and adequately protect the child(ren)'s health and safety pending a preliminary hearing; that it is contrary to the child(ren)'s welfare at this time to remain in the care, custody, or control of the parents/caretakers/custodians, because of the following (*provide specific facts for each child*): _____

The Court further finds that :

☐ Reasonable efforts have been made and services have been rendered to prevent or eliminate the removal of said child(ren) from his/her/their home, including (*if different services were provided for different children, specify below*):

- ☐ Mental health counseling for child/children
 - ☐ Drug & alcohol counseling for child/children
 - ☐ Parenting classes
 - ☐ Community Intervention Services (CIS)
 - ☐ Structured After-School/Summer Activities
 - ☐ Day Treatment for _____
 - ☐ Non-Custodial Assessment
 - ☐ Intensive in-home case management
 - ☐ Sexual perpetrator treatment for _____
 - ☐ Residential Treatment for _____
 - ☐ Locating absent parent(s)
 - ☐ Other (specify) _____
- (Detailed information) _____

- ☐ Mental health counseling for parent
- ☐ Drug & alcohol counseling for parent
- ☐ Psychological evaluation for _____
- ☐ Family Crisis Intervention
- ☐ Probation/Aftercare
- ☐ Intensive Case Management
- ☐ Home Ties
- ☐ Sexual abuse treatment for child
- ☐ Homemaker services
- ☐ Locating relatives
- ☐ Respite Care

☐ It was reasonable to make no efforts to maintain the child(ren) in the home based on an assessment of the family and the child(ren)'s circumstances that include: _____

☐ Reasonable efforts to prevent removal were not required because:

☐ this court or another court of competent jurisdiction has previously determined that the parent has subjected the child(ren) to aggravated circumstances as defined in T.C.A. §36-1-102(9);

☐ the parent has been convicted in a criminal court of one of the felony crimes against a child specified in T.C.A. §37-1-166(g)(4)(B); or

☐ the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.

☐ The Department of Children's Services failed to provide reasonable efforts to prevent the child(ren)'s removal from the home.

The Court further finds that it is in the best interest of the child(ren) and the public as follows, and

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. The child(ren) _____ is/are hereby brought into the protective custody of this Court.

2. Temporary care and custody of the child(ren) _____ is/are placed with the State of Tennessee, Department of Children's Services with authority to provide any appropriate plans for the care of said child(ren) and to consent to any necessary medical, surgical, hospital, educational, institutional, psychiatric, or psychological care pending further determination of the child(ren)'s custodial status by the Court.

3. The preliminary hearing in this cause is set for _____.

4. That _____ shall be appointed Guardian ad Litem for the child(ren).

5. That _____ [parent(s)] shall be appointed counsel to represent him/her/them.

6. It is further ordered _____

7. _____

8. All state, county, or local agencies and any public or private medical or mental health treatment resources with information on records relevant to the child(ren)'s situation shall release such information or records as are necessary for the management of this case to the legal custodian named above and to any authorized representatives of the case management team of a community health agency, which is providing coordination of care and services with the legal custodian named above.

ENTERED this _____ day of _____, _____.

JUDGE/REFEREE

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE	
STATE OF TENNESSEE)
)
IN THE MATTER OF)
_____)
	CHILD/CHILDREN UNDER
	THE AGE OF EIGHTEEN
	DOCKET NO: _____

NOTICE OF REVOCATION OF WAIVER OF PRELIMINARY HEARING

Comes _____ and pursuant to TRJP 16(b) hereby gives notice of revocation of the waiver of the preliminary hearing and requests that this matter be set for a preliminary hearing within seventy-two hours of the date of filing of this notice, as required by law.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER
THE AGE OF EIGHTEEN

IN THE MATTER OF

)

DOCKET NO: _____

)

MOTION TO SET

Comes _____ and hereby moves the court to set this matter for:

_____ Preliminary Hearing

_____ Adjudication

_____ Disposition

_____ Permanency Plan Approval or Ratification Hearing

_____ 90-day Foster Care Review Hearing

_____ Nine month Foster Care Review Hearing

_____ Permanency Hearing

In support thereof Movant would show [*List facts to support request, e.g., hearing has not been held in compliance with the time allowed by law.*]

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[*List the names and addresses of each attorney/person/party noticed.*]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
_____	)	DOCKET NO: _____

**NOTICE OF OBJECTION TO PERMANENCY PLAN
AND MOTION TO SET HEARING ON PLAN**

Comes _____ and hereby gives notice to the court that he/she objects to the permanency plan for the following reasons and moves the court for a hearing for the purpose of taking testimony and hearing argument on these matters:

- *The Plan does not adequately describe or provide for the child's needs.*
- *The Plan does not include the responsibilities of the Movant or the Department in specific and sufficient detail.*
- *The goals are not reasonably related to the circumstances that led to removal of the children.*

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER

)

THE AGE OF EIGHTEEN

IN THE MATTER OF

)

DOCKET NO: _____

PETITION TO VACATE OR MODIFY ORDER APPROVING PERMANENCY PLAN

Pursuant to T.C.A. § 37-2-410, the Petitioner _____ states as follows:

That the child _____, age _____, resides at _____

_____.

That the name and address of the parent/guardian/legal custodian is

That petitioner's relationship to or interest in the child is _____.

That the Court should vacate the Order Approving the Permanency Plan because[list reasons, i.e.:

- *The staffing did not give notice to all necessary parties.*
- *The child was not present.*
- *The parents were not present.*
- *The Plan did not adequately describe or provide for the child's needs.*
- *The Plan did not include the responsibilities in specific and sufficient detail.*
- *The Plan was not signed by a parent and not submitted to the Court for ratification within the time provided by law.*
- *The goals were not reasonably related to the circumstances that led to removal of the children.]*

Wherefore, Petitioner requests that the Court enter an order that:

- *DCS will be required to provide the following services: (list)*
- *The child's needs will be met in the following manner: (list)*

Respectfully submitted,

OATH

STATE OF TENNESSEE

COUNTY OF _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

**DIRECT REFERRAL FOR JUDICIAL REVIEW BY
FOSTER CARE REVIEW BOARD**

IN THE MATTER OF:

A Child Under the Age of 18

)
)
)

DOCKET NO: _____

_____ **This matter shall be scheduled for a hearing before the Judge/Referee within 10 days of this date.**

This Board finds the following conditions exist that constitute a risk of harm and directly compromise the health, safety or welfare of the child: _____

This Board recommends: _____

_____ **This matter shall be scheduled for a hearing before the Judge/Referee within 30 days of this date.**

This Board finds that the following conditions persist that constitute a deterrent to reaching the permanency goals and the conditions indirectly and chronically compromise the health, safety or welfare of the child: _____

This Board recommends: _____

Date

Foster Care Review Board Chair/Member

ORDER

Pursuant to T.C.A. § 37-2-406(c)(1), it is therefore **Ordered** that this matter be set for judicial review on the _____ day of _____, _____ at _____.

Judge

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER

)

THE AGE OF EIGHTEEN

IN THE MATTER OF

)

DOCKET NO: _____

**MOTION AND REQUEST FOR REHEARING
BEFORE THE JUVENILE COURT JUDGE**

Pursuant to T.C.A. § 37-1-107, I request that this case be set for rehearing before the Juvenile Court Judge. I am appealing the order from the hearing before Referee _____ on _____.

The specific part of the Referee's order that I am appealing is [list]:

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
_____	)	DOCKET NO: _____

PETITION TO VACATE OR MODIFY ORDER

Petitioner moves the court to vacate/modify the order entered on _____, pursuant to T.C.A. § 37-1-139. Petitioner would show:

1. That the child _____, age _____, resides at _____.
2. That the name and address of the parent/guardian/legal custodian is _____.
3. That petitioner's relationship to or interest in the child is _____.

- *The order was obtained by fraud or mistake sufficient for setting aside a civil judgment. (Explain circumstances.)*

- *The court lacked jurisdiction over a necessary party.*

- *The court lacked subject matter jurisdiction.*

- *Newly discovered evidence.*

- *Changed circumstances which require modification/vacation in the best interests of the child.*

Wherefore Petitioner requests _____ *specific relief sought* _____.

Respectfully submitted,

OATH

STATE OF TENNESSEE

COUNTY OF _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Sworn to and subscribed before me this _____ day of _____ , _____ .

Notary Public

My Commission Expires: _____

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

IN THE MATTER OF:

_____	DOB _____	)	NO: _____
_____	DOB _____	)	NO: _____
_____	DOB _____	)	NO: _____
Child(ren) Under Eighteen (18) Years of Age			

ICPC PRIORITY PLACEMENT ORDER

It appearing to the Court that the above-named child is/children are in the temporary legal custody of the State of Tennessee, Department of Children's Services, pursuant to an order of this Court; that an intervening petition for custody of the above-named children has been filed with this Court in compliance with the jurisdiction requirements; that the Petitioner is not a resident of the State of Tennessee as indicated in the petition for custody which is attached hereto and made a part hereof by reference; that an investigation into the Petitioner's circumstances is required by the Interstate Compact on the Placement of Children ("ICPC") [T.C.A. 37-4-201 et seq.]; that a priority placement of the children is necessary and that this request meets the requirements for priority placement because:

- _____ the proposed placement is with a relative as defined by Article VII(a) of ICPC (parent, stepparent, grandparent, adult sibling, adult uncle or aunt, or child's guardian); and
- _____ the child is under two (2) years of age; or
- _____ the child is/children are currently in an emergency shelter; or
- _____ the child has/children have spent a substantial amount of time in the home of the proposed placement resource.
- _____ the receiving state Compact Administrator has had a properly completed ICPC-100A and supporting documentation for over thirty (30) days but the sending agency has not received a notice pursuant to Article III(d) of ICPC determining whether the child/children may or may not be placed. This documentation was sent to the Compact Administrator of the State of _____ on _____.

It is the opinion of the Court that it is in the best interest of the child/children, and the public as follows, and

IT IS, THEREFORE, ORDERED:

1. That within three (3) business days, the _____ County office of the Tennessee Department of Children's Services shall transmit a copy of this order, a completed Form 100A, and all supporting documentation required pursuant to ICPC to the Tennessee Compact Administrator; and that within two (2) business days thereafter, the Tennessee Compact Administrator shall transmit the priority placement request and its accompanying

documentation to the Compact Administrator for the State of _____ as required by ICPC Regulation No. 7 for priority placement requests.

2. That the Tennessee Department of Children's Services shall keep this Court informed of the status of this priority request and shall file the written report received from the State of _____ with this Court immediately upon its receipt; and that the pending Petition for Custody shall be set for adjudication and disposition after that report has been filed with the Court.

ENTERED this the _____ day of _____, _____.

JUDGE/REFEREE

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

)

CHILD/CHILDREN UNDER

)

THE AGE OF EIGHTEEN

IN THE MATTER OF

)

)

DOCKET NO: _____

**MOTION FOR ORDER REQUIRING DEPARTMENT OF CHILDREN'S SERVICES TO
PROVIDE PRE-ADOPTION SERVICES**

Comes _____ and hereby moves the court to order the Department of Children's Services to
provide adoption preparation services for the child in this case including:

- *adoption preparation counseling*
- *grief and abandonment counseling*
- *recruitment of adoptive families*

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage
prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
_____	)	DOCKET NO: _____

**NOTICE OF APPEAL TO CIRCUIT COURT FOR DE NOVO HEARING
PURSUANT TO T.C.A. § 37-1-159**

Comes _____ and hereby gives Notice of Appeal pursuant to T.C.A. § 37-1-159 to the Circuit Court from the final order or judgment entered by the Juvenile Court in this matter, entered on the _____ day of _____, _____.

Appellant asserts pursuant to this court's previous finding of indigency that appellant is entitled to appeal this matter in forma pauperis and an oath of indigency is attached to this notice.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE (CIRCUIT/CHANCERY/JUVENILE) COURT FOR _____ COUNTY,
TENNESSEE

PETITIONER(S))
)
)
v.) NO. _____
)

RESPONDENT(S))

IN THE MATTER OF:

_____, b.d. _____

A (CHILD/CHILDREN) UNDER EIGHTEEN (18) YEARS OF AGE

PETITION TO TERMINATE PARENTAL RIGHTS

This petition, filed by _____, requests an order terminating the parental rights of Respondent(s) _____, which order shall forever sever all (his/her/their) rights, responsibilities, and obligations with respect to the child(ren), _____, and shall likewise sever all rights and obligations of (this child/these children) to Respondent(s) arising from the parental relationship. This petition is brought pursuant to the provisions of T.C.A. 37-1-147, T.C.A. 36-1-113, T.C.A. 36-1-117, T.C.A. 36-1-102(1), ☐ T.C.A. 37-2-403(a)(2), ☐ T.C.A. 36-1-113(g)(8), and upon the following facts:

I

JURISDICTION and VENUE

1. This Court has jurisdiction over this action pursuant to T.C.A. 36-1-113(a), 37-1-104(c), and 37-1-147. Venue is properly in _____ County pursuant to T.C.A. 36-1-113(d)(4), ☐ 36-1-114 and 37-1-111(d), in that the (child is/children are) currently in the legal custody of _____

- ☐ pursuant to a prior order of this Court.
☐ pursuant to a prior order of the Juvenile Court of _____ County.
☐ and resides in this County.

2. Pursuant to the Uniform Child Custody and Jurisdiction Enforcement Act, Petitioner states that the Peitioner has not participated in any other proceeding concerning the custody of (this child/these children) except for the (delinquency/unruly/dependency and neglect proceedings) in the Juvenile Court of _____ County, Tennessee, which brought the child(ren) into foster care; that the Peitioner does not know of any other

proceedings that could affect this proceeding, including proceedings related to domestic violence, protective orders, termination of parental rights and adoption; and that the Petitioner does not know of any other person not a party to this proceeding who has physical custody of the child or claims rights of legal custody or physical custody of or visitation with the child, except as otherwise noted in this petition.

II

BIRTH INFORMATION & NECESSARY PARTIES

☐ _____ was born during the marriage of _____ and _____ in _____ County, _____. A copy of (his/her) birth certificate is attached. ☐ _____ was born out wedlock to _____ on _____, in _____ County, _____. A copy of (his/her) birth certificate is attached.

☐ _____ executed a Voluntary Acknowledgment of Paternity and his name is shown as the father on the child's birth certificate.

☐ _____ has been determined to be the father of this child and an order of parentage was issued by the _____ Court of _____ County, _____ on _____, _____. [No. _____]

☐ The child's birth certificate is silent as to the identity of (his/her) father and parentage has not been established prior to the filing of this petition.

☐ A legitimization/paternity action is currently pending in the _____ Court of _____ County, _____, naming _____ as the father of this child. [No. _____]

☐ _____ has filed with the putative father registry a statement of intent to claim paternity of this child.

☐ The child's mother has specifically identified _____ as the biological father of this child in a written, sworn statement or by other credible and reliable information.

☐ _____ has claimed that he believes he is the father of this child.

☐ _____ was openly living with this child at the time of the child's removal into foster care and held himself out to be the father of the child at that time.

☐ _____ has entered into a permanency plan with the Department of Children's Services in which he acknowledged paternity of this child.

☐ Termination of the parental rights of _____ will be pursued through independent proceedings.

☐ _____ has previously surrendered (his/her) parental rights to the Department of Children's Services and an order of partial guardianship has been entered.

☐ _____ has executed an irrevocable Waiver of Interest, a copy of which is attached.

☐ _____ is deceased.

There are no other persons entitled to notice pursuant to T.C.A. 36-1-117 of this proceeding or of any subsequent adoption proceeding with regard to (this child/these children). The putative father registry maintained by the Department of Children's Services was consulted within ten (10) working days of the filing of his petition and there are no additional claims on the registry to the paternity of (this child/these children). Petitioner knows of no other existing or potential claim to the paternity of this child.

III CUSTODY

The temporary custody of _____
was awarded to _____ by order of the _____ Court of _____
County, Tennessee; (he/she/they) (has/have) been in foster care continuously since that date. A copy of this order is attached.

☐ Attorney _____ has been appointed Guardian Ad Litem to represent the best interests of (this child/these children)

IV (For each ground include the supporting facts.)

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ Respondent _____ has abandoned (this child/these children) in that Respondent has willfully failed to visit (or to engage in more than token visitation) for four (4) consecutive months immediately preceding the filing of this petition (prior to incarceration).

☐ Respondent _____ has abandoned (this child/these children) in that Respondent is now or has been incarcerated during all or part of the four (4) months immediately preceding the filing of this petition and has willfully failed to visit (or to engage in more than token visitation) for four (4) consecutive months immediately preceding such incarceration.

☐ Compliance with T.C.A. 36-2-403(a)(2)(B) was established by _____

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ Respondent _____ has abandoned (this child/these children) in that Respondent has willfully failed to support or make reasonable payments toward the support of the child(ren) for four (4) consecutive months immediately preceding the filing of this petition.

☐ Respondent _____ has abandoned (this child/these children) in that Respondent is now or has been incarcerated during all or part of the four (4) months immediately preceding the filing of this petition and has willfully failed to support or make reasonable payments toward the support of the child(ren) for four (4) consecutive months immediately preceding such incarceration.

☐ Compliance with T.C.A. 36-2-403(a)(2)(B) was established by _____

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ Respondent has abandoned (this child/these children) in that Respondent willfully failed to make reasonable payments toward the support of the child(ren)'s mother during the four (4) months immediately preceding the birth of (the/each) child.

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ (This child was/These children were) found to be dependent and neglected by this Court and (was/were) placed in the custody of the Department of Children's Services; the Department made reasonable efforts to prevent removal or the child(ren)'s situation prevented reasonable efforts from being made prior to removal; the Department has made reasonable efforts to assist the parents to establish a suitable home for the child(ren) for a period of four (4) months following the removal, but Respondent(s) (has/have) made no reasonable efforts to provide a suitable home and (has/have) demonstrated a lack of concern for the child(ren) to such a degree that it appears unlikely that (he/she/they) will be able to provide a suitable home for the child(ren) at an early date.

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by Respondent pursuant to T.C.A. 68-11-255 and, for a period of no less than ninety (90) days after the date of voluntary delivery, including thirty (30) days after notice was given under T.C.A. 36-1-142(e), the mother failed to visit or seek contact with the infant or to revoke her voluntary delivery.

GROUND ☐: T.C.A. 36-1-113 (g)(3)

☐ The child(ren) (has/have) been removed by order of this Court for a period of six (6) months; the conditions which led to (his/her/their) removal still persist; ☐ other conditions persist which in all probability would cause the child(ren) to be subjected to further abuse and neglect and which, therefore, prevent the child(ren)'s return to the care of Respondent(s); there is little likelihood that these conditions will be remedied at an early date so that (this child/these children) can be returned to Respondent(s) in the near future; the continuation of the legal parent and child relationship greatly diminishes the child(ren)'s chances of early integration into a stable and permanent home.

GROUND ☐: T.C.A. 36-1-113 (g)(2) and 37-2-403(a)(2)

☐ Respondent(s) _____ (has/have) failed to comply in a substantial manner with those reasonable responsibilities related to remedying the conditions which necessitate foster care placement.

GROUND ☐: T.C.A. 36-1-113 (g)(3) and 37-1-102(b)(21)

☐ Respondent _____ has (been found to have) committed severe child abuse against this child (sibling/half-sibling/child residing in the home).

☐ Respondent _____ has been sentenced to more than two (2) years imprisonment for conduct which has been or is found to be severe child abuse.

GROUND ☐: T.C.A. 36-1-113 (g)(6)

☐ Respondent _____ has been confined in a correctional or detention facility by order of a court as a result of a criminal act under a sentence of 10 or more years and the child(ren) (was/were) under eight at the time the sentence was entered by the court.

GROUND ☐: T.C.A. 36-1-113 (g)(7)

☐ Respondent _____ has been (convicted of/ found civilly liable for) the intentional or wrongful death of the child's other parent or legal guardian.

GROUND ☐: T.C.A. 36-1-113 (g)(1) and 36-1-102(1)

☐ Prior to (his/her) current incarceration, Respondent _____ engaged in conduct which exhibits a wanton disregard for the welfare of the child(ren).

GROUND ☐: T.C.A. 36-1-113 (g)(3)

☐ Respondent _____ is incompetent to adequately provide for the further care and supervision of the child(ren) because the parent's or guardian's mental condition is presently so impaired and is likely to remain so impaired that it is unlikely that (he/she) will be able to assume the care of and responsibility for the child(ren) in the near future.

GROUND ☐: T.C.A. 36-1-113 (g)(9) and 36-1-117(c)

☐ Respondent _____ has failed to file a petition to legitimate the child(ren) within thirty (30) days after notice of alleged paternity by the child(ren)'s mother.

☐ Respondent _____ has abandoned the child(ren) in that Respondent willfully failed to make reasonable payments toward the support of the child(ren)'s mother during the four (4) months immediately preceding the birth of (the/each) child.

☐ Respondent _____ has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child(ren) in accordance with his financial means promptly upon Respondent's receipt of notice of (the/each) child's impending birth.

☐ Respondent _____ has abandoned (this child/these children) in that Respondent has willfully failed to support or make reasonable payments toward the support of the child(ren) for four (4) consecutive months immediately preceding the filing of this petition.

☐ Respondent _____ has abandoned (this child/these children) in that Respondent is now or has been incarcerated during all or part of the four (4) months immediately preceding the filing of this petition and has willfully failed to support or make reasonable payments toward the support of the child(ren) for four (4) consecutive months immediately preceding such incarceration.

☐ Respondent _____ has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child(ren) in accordance with the child support guidelines promulgated by the Tennessee Department of Human Services pursuant to T.C.A. 36-5-101.

☐ Respondent _____ has failed to seek reasonable visitation with the child(ren), and if visitation has been granted, has failed to visit altogether or has engaged in only token visitation as defined in T.C.A. 36-1-102(1)(D).

☐ Respondent _____ has abandoned (this child/these children) in that Respondent has willfully failed to visit (or to engage in more than token visitation) for four (4) consecutive months immediately preceding the filing of this petition (prior to incarceration).

☐ Respondent _____ has abandoned (this child/these children) in that Respondent is now or has been incarcerated during all or part of the four (4) months immediately preceding the filing of this petition and has willfully failed to visit (or to engage in more than token visitation) for four (4) consecutive months immediately preceding such incarceration.

- ☐ Compliance with T.C.A. 36-2-403(a)(2)(B) was established by _____
- ☐ Respondent _____ has failed to manifest an ability and willingness to assume legal and physical custody of the child(ren).
- ☐ Awarding legal and physical custody of the child(ren) to Respondent _____ would pose a risk of substantial harm to the physical or psychological welfare of the child(ren).
- ☐ Respondent _____ has failed to grasp the opportunity to assert his inchoate parental rights with regard to the child(ren).

☐ **BEST INTEREST**

1. It is in the best interest of _____ and the public that this proceeding be brought, that all of the parental rights of Respondent(s) to (this child/these children) be forever terminated, and that the complete custody, control and guardianship of (this child/these children) be awarded to Petitioner, with the right to place (him/her/them) for adoption and to consent to such adoption in loco parentis.
2. Pursuant to T.C.A. 36-1-113(i), Petitioner states that
- ☐ Respondent(s) _____ (has/have) not made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child(ren)'s best interest to be in (his/her/their) home despite reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible; _____
- ☐ Respondent(s) _____ (has/have) not made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child(ren)'s best interest to be in (his/her/their) home; _____
- ☐ Respondent(s) _____ (has/have) failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible; _____
- ☐ Respondent(s) _____ (has/have) not maintained regular visitation or other contact with the child(ren); _____
- ☐ No meaningful relationship has otherwise been established between Respondent(s) _____ and the child(ren); _____
- ☐ A change of caretakers and physical environment is likely to have a (detrimental/negative) effect on the child(ren)'s emotional, psychological and medical condition; _____
- ☐ Respondent(s) _____ or other person residing with Respondent(s) (has/have) shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child(ren), or another child or adult in the family or household; _____
- ☐ The physical environment of Respondent's (Respondents') home is unhealthy or unsafe for the child(ren); _____
- ☐ There is criminal activity in the home; _____
- ☐ There is such use of alcohol or controlled substances as may render Respondent(s) _____ consistently unable to care for the child(ren) in a safe and stable manner;

☐ Respondent's (Respondents') mental and/or emotional status would be detrimental to the child(ren) or prevent Respondent(s) from effectively providing safe and stable care and supervision for the child(ren);

☐ Respondent(s) _____ (has/have) not paid child support consistent with the child support guidelines promulgated by the Department of Human Services pursuant to T.C.A. 36-5-101;

☐ Respondent(s) _____ (has/have) not paid a reasonable portion of the child(ren)'s substitute physical care and maintenance when financially able to do so.

3. Petitioner further states that

☐ the (child is/children are) placed in a (kinship) foster home that wishes to adopt the child(ren);

☐ the (child had/children have) developed a strong bond with the (kinship) foster family;

☐ the (child had/children have) expressed a desire to have parental rights terminated so that (he/she/they) can be adopted.

APPELLATE PROCEDURE

Any appeal of the trial court's final disposition of the complaint or petition for termination of parental rights will be governed by the provisions of Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of the transcript or statement of evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate court, as well as other special provisions for expediting the appeal. All parties must review Rule 8A, Tenn. R. App. P., for information concerning the special provisions that apply to any appeal of this case.

WHEREFORE, PETITIONER PRAYS:

That Respondent(s) _____ be personally served with a copy of this petition and be summoned to appear and answer.

☐ That Respondent(s) _____ be served by publication as provided by law.

☐ That the Court consider the need to appoint counsel for Respondent(s) who may be incompetent or indigent or as may otherwise be required by law.

☐ That a Guardian ad litem be appointed to represent the best interest of (this child/these children).

☐ That Guardian ad litem _____ be personally served with a copy of this petition and be required to appear and answer.

☐ That a summons also be directed to _____ as required by T.C.A. 37-1-121(a).

☐ That upon hearing the Court find that termination of parental rights is in the best interest of the child(ren)..

☐ That upon hearing, the Court enter a decree forever terminating all of the parental rights which Respondent(s) (has/have) to _____; providing that Respondent(s) shall have no further right to notice of proceedings for the adoption of (this child/these children), shall have no right to object to the child(ren)'s adoption, and shall have no relationship, legal or otherwise, with the child(ren); and awarding the complete custody, control and guardianship of the child(ren) to the _____, with the right to place (him/her/their) for adoption and to consent to such adoption in loco parentis.
That the Court grant such other, further and general relief as may be necessary.

Petitioner

BY: _____
Attorney for Petitioner

STATE OF TENNESSEE
COUNTY OF _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

Petitioner

Sworn to and subscribed before me this the _____ day of _____, 2004.

Notary Public

My commission expires: _____

(Form Compliments of DCS Legal Division)

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE	)	CHILD/CHILDREN UNDER
_____	)	THE AGE OF EIGHTEEN
IN THE MATTER OF)	
_____)	
	)	DOCKET NO. _____

**AFFIDAVIT OF DILIGENT EFFORTS
TO LOCATE PARENT OR LEGAL GUARDIAN**

The Affiant, being first duly sworn, makes oath as follows:

1. The whereabouts of the mother or father or legal guardian is unknown to me.
2. I do not know how to locate this person or persons so that he/she/they can be notified of this legal action.
3. The last time I had contact with this person or persons was:
4. The last address that I am aware this person or persons lived was:
5. I have contacted the following relatives, friends, or acquaintances of this person to try to learn how to get in touch with this person:
6. I have provided the court with all information in my possession that would help the court in locating this person or persons.
7. I understand that I am required to provide the court with any additional information that comes to my attention that would help in locating this person or persons.
8. I understand that if I come in contact with this person or persons, I am required to tell him/her about the court proceeding, about any orders that have been issued by the court, and any dates I am aware of, and to offer to provide copy of the court papers I have and do so if they request copies, and advised him/her to contact the juvenile court.
9. Additional assertions regarding efforts to locate:
Examples:
Drivers license checked
Credit bureau checked
Criminal records checked
Parent locator service checked
Social service and public assistance records checked
Post offices, cross-city directories and telephone directories checked
Police records checked
Military service records checked
Student records checked if parent believed to be attending school
Landlord checked
Department of employment security checked

Utility companies checked
County records of tax assessor
Registrar of deeds checked
County court clerk records checked

Affiant

Sworn to and subscribed before me this _____ day of _____, _____

Notary Public / Deputy Clerk

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE)
DEPARTMENT OF CHILDREN'S SERVICES,)
Petitioner,)

vs.)

File No. _____
Docket No. _____

UNKNOWN FATHER)
whereabouts unknown)

IN THE MATTER OF:)
D.O.B. _____)

A CHILD UNDER THE AGE OF EIGHTEEN)
(18) YEARS,)

MOTION FOR PUBLICATION

Comes the Petitioner, _____, _____, by and
through its undersigned Counsel and moves this Honorable Court for an Order for Publication for the
Defendants to appear and answer to this cause.

As grounds, therefore, your Movant would show that the previous last known addresses of these
parents are no longer valid. Movant would further show that the Putative Father Registry has been
checked and no one has claimed to be the father. Further, a diligent search was completed that revealed
no addresses for the Defendants.

Respectfully Submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage
prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT FOR _____ COUNTY, TENNESSEE

STATE OF TENNESSEE)
DEPARTMENT OF CHILDREN'S SERVICES,)
Petitioner,)

vs.)

File No. _____
Docket No. _____

UNKNOWN FATHER)
whereabouts unknown)

IN THE MATTER OF:)
D.O.B. _____)

A CHILD UNDER THE AGE OF EIGHTEEN)
(18) YEARS,)

ORDER FOR PUBLICATION

In this cause, it appears to the Court from the allegations of the Petition filed by the Tennessee Department of Children's Services seeking to terminate forever the parental rights of (parents names), to (child/ren's names); which Petition may be obtained at the Office of the Juvenile Court of _____ County, Tennessee, at _____; that the ordinary process of law cannot be served upon said Respondents.

IT IS, THEREFORE, ORDERED that the appearance hearing in this matter is scheduled for _____, _____ at _____. A copy of this Order shall be published for four (4) consecutive weeks in the _____, a newspaper published in _____ County, Tennessee.

Failure of the Respondents to appear at the final hearing on _____, _____ at _____ may result in a judgment terminating parental rights being entered against the Respondents.

Enter this the _____ day of _____, _____.

JUDGE

IN THE _____ COURT FOR _____, TENNESSEE
[INSERT TRIAL COURT NAME] [INSERT COUNTY NAME]

_____,)
[Party(ies) Name(s) as styled in Trial Court])
Plaintiff(s)/_____,)
[Insert Appellant or Appellee])
v.) Trial Court No.)
_____,)
[Party(ies) Name(s) as styled in Trial Court])
Defendant(s)/_____,)
[Insert Appellant or Appellee])

NOTICE OF APPEAL

Notice is hereby given that _____ named, hereby appeals to the
[Insert Name of Appealing Party(ies)]

_____ [Insert the Name of the Court Appealing To]
from the final judgment of _____
[Insert the Name of the Court Appealing From]
entered in this action on the ____ Day of _____, 20__.

Attorney or Pro Se Party(ies):

Name [print] Signature BPR Nr

Address of Attorney or Pro Se Party: _____

Cost Bond on appeal is: Filed Indigent Not required Cash bond

If not required, state
reason: _____
[use additional sheet if necessary]

Attach Certificate of Service To Notice of Appeal - Tenn. R. App. P. 20¹

Appellant(s)
[Party Initiating the Appeal]

Appellant: _____ **At trial:** Plaintiff Defendant
Address/Phone#: _____

Appellee(s)
Appellee: _____ **At trial:** Plaintiff Defendant
Attorney's Name: _____ BPR# _____
Address/Phone#: _____

¹ Attach an additional sheet for each additional Appellant and Appellee.

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Plan Date: _____ Plan Type: _____ Case Manager Name: _____
Initial Plan Date: _____ Plan Status: _____ Office Phone #: _____ Ext: _____

Section 1A: General Information

Name:	DOB:	
Alias Names:	SSN:	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
	Hispanic/Latino Origin: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unable To Determine	
Race:		

Section 1B: Court

Current Custody		Adjudication Type: <input type="checkbox"/> Dependent/Neglect <input type="checkbox"/> Unruly <input type="checkbox"/> Delinquent
Disposition Date: _____		
Court: _____		
Adjudication Date: _____		
Other Adjudications:		
Type:	Date:	
Legal Status:		
Temporary Custody	<input type="checkbox"/>	_____
Partial Guardianship	<input type="checkbox"/>	_____
Guardianship	<input type="checkbox"/>	_____
Indeterminate (Delinquent Only)	<input type="checkbox"/>	_____
Determinate (Delinquent Only)	<input type="checkbox"/>	_____
Voluntary Placement	<input type="checkbox"/>	_____
Has child previously been in state custody?: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Reason(s) for prior custody:		
Is there a current order for child support? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Support Amount?	Payment Frequency:	
Court that ordered support:	State:	Docket Number:
If there was no court order and support was not part of the custody order, did DCS petition for child support? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Section 1C: Permanency Goal

Goal Established Date:	Goal Target Date:	
-------------------------------	--------------------------	--

- ☐ Reunify with Parent(s) Caretaker(s)
☐ Exist Custody to Live with Relative(s)
☐ Adoption
☐ Planned Permanent Living Arrangement with Relatives(s)
☐ Planned Permanent Living Arrangement with Non-Relative(s)
☐ Reunify with Parent(s) / Caretaker(s) / Exit Custody to Live with Relative(s)

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

- ☐ Reunify with Parent(s) / Caretaker(s) / Adoption
- ☐ Reunify with Parent(s) / Caretaker(s) / Planned Permanent Living Arrangement with Relative(s)
- ☐ Reunify with Parent(s) Caretaker(s) / Planned Permanent Living Arrangement with Non-Relative(s)
- ☐ Exit Custody to Live with Relative(s) / Adoption
- ☐ Exit Custody to Live with Relative(s) / Planned Permanent Living Arrangement with Relative(s)
- ☐ Exit Custody to Live with Relative(s) / Planned Permanent Living Arrangement with Non-Relative(s)
- ☐ Adoption / Planned Permanent Living Arrangement with Relative(s)
- ☐ Adoption / Planned Permanent Living Arrangement with Non-Relative(s)

Goal Change Reason:

Section 1D: Family Information

Name: _____ Relationship: _____
Phone: _____ Ext: _____ DOB: _____
Address: _____

Name: _____ Relationship: _____
Phone: _____ Ext: _____ DOB: _____
Address: _____

Name: _____ Relationship: _____
Phone: _____ Ext: _____ DOB: _____
Address: _____

Name: _____ Relationship: _____
Phone: _____ Ext: _____ DOB: _____
Address: _____

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Other Persons:

Name	Relationship	Address	Phone	Resource
				Placement <input type="checkbox"/> Visiting <input type="checkbox"/> Other (describe) <input type="checkbox"/>
				Placement <input type="checkbox"/> Visiting <input type="checkbox"/> Other (describe) <input type="checkbox"/>
				Placement <input type="checkbox"/> Visiting <input type="checkbox"/> Other (describe) <input type="checkbox"/>
				Placement <input type="checkbox"/> Visiting <input type="checkbox"/> Other (describe) <input type="checkbox"/>

Section 2: Reasons for Custody

Custody Reasons

What specific event led to state custody? What risks or behaviors of the child or caretaker, or conditions contributed to state custody? What efforts has the department put forth to prevent state custody?

Section 3: Placement History

List all placements since the beginning of the current custody episode. Begin with the child's current placement. You may attach a separate listing of all placements if there is insufficient room below.

Placement Name	Placement Type	<u>Begin Date</u>	<u>End Date</u>	<u>Current Placement</u>	Discharge Reason
				<input type="checkbox"/>	
				<input type="checkbox"/>	
				<input type="checkbox"/>	
				<input type="checkbox"/>	
				<input type="checkbox"/>	

Section 4: Health

Disclaimer: Medical information displayed on this plan is current as of the date of the plan. This information does not reflect health information recorded after the creation of this plan.

Write the name and address of the child's health providers. (Include the child's primary care physician, managed care organization, and behavioral health organization. If there are changes, revise.)

A. Primary Care Physician	B. Managed Care Organization (MCO)	C. Behavioral Health Organization (BHO)
_____	_____	_____
Phone: _____ Ext: _____	Phone: _____ Ext: _____	Phone: _____ Ext: _____

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Child's Known Medical Problems:

<u>Medical Condition</u>	<u>Contagious Disease?</u>	<u>Begin Date</u>
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	

Current Medications:

<u>Medication Name</u>	<u>Begin Date</u>

Most recent immunizations: (or attach copy of immunization record): ☐ Immunization record attached

<i>Vaccine Name</i>	<i>Vaccine Date</i>

Most Recent EPSD&T Dental Screening Date:

Most Recent EPSD&T Medical Screening Information:

Date: _____ Facility Name: _____

Result of Visit:

Provider Name: _____ Professional Title: _____

Comprehensive Health and Developmental History: Yes___ No___ Health Education: Yes___ No___
 Comprehensive Unclothed Physical Exam: Yes___ No___ Vision Screening: Yes___ No___
 Appropriate Immunizations Based on Age and Health History: Yes___ No___ Hearing Screening: Yes___ No___
 Appropriate Lab Tests Based on Age and Health History: Yes___ No___
 Explain if 'No':

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

EPSD&T Screening:

☐ The EPSD&T results were considered in this permanency plan child and family team meeting and the EPSD&T letter confirming the results will be attached to the plan before submission to juvenile court.

☐ The EPSD&T results were not available at the time this permanency plan child and family team meeting was held, but recommendations for further care will be completed. The EPSD&T screening results, stating whether all seven components were completed and any discovered needs for further care, will be attached to the plan before submission to the juvenile court once the screening results are received. If screening results are received after court ratification, the permanency plan will be revised to include EPSD&T results and the plan will be resubmitted to the court. A new staffing will be convened if the EPSD&T screening results require a decision to be made by the Child and Family Team. **Date of EPSD&T Medical**

Screening Appointment:

Any other relevant health information:

Section 5: Education

A. List the names and addresses of the child's educational providers.

Current in State Custody:

1. School Name: _____
School Address: _____
LEA: _____ First Date of Attendance: _____

Prior to State Custody:

2. School Name: _____
School Address: _____
LEA: _____ Last Date of Attendance: _____

B. If the child did not attend the same school after placement, explain why it was not possible:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

C. Have the child's school records been requested and received? ☐ Yes ☐ No

If not received, date requested: _____

If not requested, explain:

D. Grade Child is Currently Attending: _____

E. Child's Grade Level Performance: ☐ Above grade level ☐ At grade level ☐ Below grade level
Explain Grade Level Performance:

Is child certified for special education?: ☐ Yes ☐ No
If certified special ed., has IEP been obtained?: ☐ Yes ☐ No

Special Education Certification Reasons:

Any other relevant educational information:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 6: Appropriate Services/Placements

A. Appropriate Service/Placement

*Indicate the level of service intensity to the family, and/or level of placement that best meets the child/adolescent's needs in the least restrictive environment based on the Assessment Protocols and Decision Guidelines.

B. Placement Outside Home Region

*If the child is to be placed, and the placement is outside the DCS region, explain why that is the most appropriate placement.

Section 7: Visitation

A. Is there a Court Order Addressing Parental Visitation: ☐ Yes ☐ No

If yes, the remainder of this section should conform to court order.

How will communication between the child/adolescent and other family members (including siblings) be assured?

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Name: _____

☐ Supervised Visits ☐ Unsupervised Visits ☐ Phone Calls ☐ Letters
☐ No Contact Allowed

Explain visitation limitations for each visitation situation identified below:

If sibling visitation has not been addressed (siblings placed together or visitation not in the best interest of child), please explain. If there is a court order addressing parental visitation, this narrative should reflect information from that order. If there are no siblings, no visitation restrictions, and no court-ordered parental visitation, please record 'None' in this field.

Name: _____

☐ Supervised Visits ☐ Unsupervised Visits ☐ Phone Calls ☐ Letters
☐ No Contact Allowed

Explain visitation limitations:

If sibling visitation has not been addressed (siblings placed together or visitation not in the best interest of child), please explain. If there is a court order addressing parental visitation, this narrative should reflect information from that order. If there are no siblings, no visitation restrictions, and no court-ordered parental visitation, please record 'None' in this field.

Name: _____

☐ Supervised Visits ☐ Unsupervised Visits ☐ Phone Calls ☐ Letters
☐ No Contact Allowed

Explain visitation limitations:

If sibling visitation has not been addressed (siblings placed together or visitation not in the best interest of child), please explain. If there is a court order addressing parental visitation, this narrative should reflect information from that order. If there are no siblings, no visitation restrictions, and no court-ordered parental visitation, please record 'None' in this field.

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

B. Parent's Responsibilities (regarding visitation):

C. Department Responsibilities (regarding visitation):

D. Provider/Agency Responsibilities (regarding visitation):

E. Relative, Foster Parent and Other Resource Responsibilities (regarding visitation):

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 8: Child and Family Strengths

Child and Family Strengths

Describe Child and Family strengths that may facilitate safety, permanency and well-being of the child and family:

Child and Family Needs

Describe Child and Family needs related to the safety, permanency and well-being of the child and family:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency – Needs and Goals of Child/Youth

If the child is 14 years of age or older, developmentally appropriate independent living issues should be addressed.

Child (Complete this section for all children)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency – Needs and Goals of Child/Youth

If the child is 14 years of age or older, developmentally appropriate independent living issues should be addressed.

Child (Complete this section for all children)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 9: Action Plan for Permanency

- ☐ Reunify with Parent(s) / Caretaker(s)
- ☐ Exit Custody to Live with Relative(s)
- ☐ Adoption
- ☐ Planned Permanent Living Arrangement with Relative(s)
- ☐ Planned Permanent Living Arrangement with Non-Relative(s)

Desired Outcome:

***Actions Needed to Achieve
Desired Outcome:***

Expected Achievement Date:

Responsible Person:

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Section 10: Agreements and Signatures

A. Child Agreements: _____

B. Parent Agreements: _____

I/we have participated in the development of the Permanency Plan.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA	I/we have participated in the development of the Permanency Plan.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
Permanency Plan has been discussed with me/us.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA	Permanency Plan has been discussed with me/us.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
I/we agree with the Permanency Plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA	I/we agree with the Permanency Plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
I have been provided with a written copy of my appeal rights (ages 14 and over only).	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA	I have been provided with a written copy of my appeal rights (ages 14 and over only).	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
For each "No" or "NA" answer, explain reasons why not applicable or areas of disagreement:			Note to parent: The plan will be reviewed by the court. For each "No" or "NA" answer, explain reasons why not applicable or areas of disagreement:		
Signature of Agreement			Signature of Agreement		
Signature Date:			Signature Date:		

C. Parent Agreements: _____

I/we have participated in the development of the Permanency Plan.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
Permanency Plan has been discussed with me/us.	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
I/we agree with the Permanency Plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
I have been provided with a written copy of my appeal rights (ages 14 and over only).	<input type="checkbox"/> Yes	<input type="checkbox"/> No or NA
Note to parent: The plan will be reviewed by the court. For each "No" or "NA" answer, explain reasons why not applicable or areas of disagreement:		
Signature of Agreement		
Signature Date:		

Department of Children Services

Permanency Plan for: _____

DOB: _____ Gender: _____ SSN: _____

Signature of Participants:

<u>Participants Type</u>	<u>Name</u>	<u>Date</u>	<u>Signature</u>
Child/Adolescent:			
Parent/Guardian:			
Parent/Guardian:			
Case Manager Signature:			
Provider/Agency Signature:			
DCS Team Leader Signature:			
DCS Legal Staff Signature:			
Other Participants: (specify relationship and/or organization)			
Other Participants: (specify relationship and/or organization)			
Other Participants: (specify relationship and/or organization)			

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Upon consideration of the appropriateness of the foregoing plan and the evidence presented in the support thereof with all parties having the opportunity to be heard, the court finds:

The responsibilities outlined in the plan are reasonable, are reasonably related to the achievement of the goal, are related to remedying the conditions which necessitated foster care, and are in the best interests of the child.

The court hereby APPROVES the plan.

Date: _____

JUDGE

Department of Children Services

Permanency Plan for: _____

DOB: _____ **Gender:** _____ **SSN:** _____

Section 11:

Notice of Action Attached: ☐ Yes ☐ No

Section 12:

Notice of Termination of Procedures Attached: ☐ Yes ☐ No

Permanency Plan Instructions

Tennessee Department of Children's Services

Introduction

A permanency plan child and family team meeting should be convened within 15 working days, and a permanency plan should be completed within 30 calendar days, of a child/youth being placed in the custody of the Tennessee Department of Children's Services. The child and family team meeting and the permanency plan should comply with policies 16.31 and 31.9.

The initial permanency plan should be created in TN Kids (entering only the case manager's phone number, and other known facts that do not need to first be discussed with the child and family team) prior to the child and family team meeting so that it can be printed to take to the child and family team meeting. The sections which should not be completed outside of the child and family team meeting are: permanency goal, goal change reason (if applicable), visitation (Section 7), strengths & needs (Section 8), action plan (Section 9), and Sections 10, 11, & 12. (Revised permanency plans should not be created until after the child and family team meeting, and instead, a template should be created, printed, and taken to the child and family team meeting.)

Only in situations when TN Kids is inaccessible, should the template posted on the DCS Intranet "Forms" link be printed and used during the child and family team meeting (as it will not include derived information). Regardless of which template is utilized during the development of the permanency plan, the information that is handwritten must be typed into TN Kids, exactly as it appears on the copy distributed to the parties and submitted to court. For assistance with use of the permanency plan in TN Kids, please refer to the Web Based Training available on the DCS Intranet site. In addition to entering the initial and revised plans into the TN Kids "Permanency Plan" icon, the permanency plan child and family team meeting must be entered into the "Reviews, Hearings, & CFTM" icon (as an Initial Permanency Plan CFTM or a Revised Permanency Plan CFTM).

System Derived Information

The system will derive certain information into the permanency plan (and into the template), and therefore the information should be reviewed for accuracy (and any necessary corrections made in the system, then refreshed) prior to printing the permanency plan (or template) for the child and family team meeting. Information that will be derived includes:

- ☐ Client
 - ☐ Name
 - ☐ Social Security Number
 - ☐ Gender
 - ☐ DOB
 - ☐ Race
 - ☐ Hispanic Origin Y/N
- ☐ Other Persons
 - ☐ Name
 - ☐ Date of Birth
 - ☐ Relationship to Client
 - ☐ Address/Phone
 - ☐ Legal Rights Y/N

- TPR Date
- ❑ Placements
 - Placement Name
 - Placement Type
 - Begin Date
 - End Date
 - Discharge Reason
- ❑ Medical
 - Medical Conditions (Name, Contagious Disease?, Begin Date)
 - Medications (Name, Begin Date)
 - Immunizations (Vaccine Type, Vaccine Date)
 - EPSD&T Medical Screening
 - EPSD&T Dental Screening
- ❑ Education
 - School Name
 - School Address
 - Currently Attending Y/N
 - Start Date
 - End Date
 - LEA#
 - Grade Level
 - Special Education Certification Reason(s)
 - Enter school client attended prior to custody, if applicable

Heading

- ❑ **Plan Date:** Enter the date when the plan is being developed. It must fall within the dates of the custody episode. If the plan is developed over multiple dates, enter the earliest date of the development process.
- ❑ **Plan Type:** This will be auto-filled as either “initial” (if there is no active plan for this child during this custody episode) or “revised”.
- ❑ **Initial Plan Date:** This will be auto-filled.
- ❑ **Plan Status:** This will be auto-filled. The options are:
 - Incomplete (work in progress; case manager can delete it)
 - Complete (case manager has designated it as “complete”; case manager can still delete it)
 - Active (team leader has approved it; only FSA can delete it)
 - Inactive (previously active plan that has been replaced by a team leader approved, revised plan or a previously active plan associated with a custody episode that has ended; entire plan can be viewed)
 - Deleted (previously active or inactive plan that has been deleted by an FSA; only general tab and delete reason available to be viewed)
- ❑ **Case Manager Name:** Enter the name of the assigned, primary DCS case manager.
- ❑ **Office Phone #:** Enter the case manager’s office telephone number. This field must be complete to create a permanency plan template in TN Kids.

Section 1A: General Information

- ❑ All information in this section will be derived from the system.

Section 1B: Court

- ❑ **Current Custody:** These fields will all be derived.
- ❑ **Other Adjudications:** This field is problematic due to the system. For now, use a pen and enter/correct the derived information prior to the plan being copied/distributed/submitted to court. It is unlikely that there will be an adjudication prior to the development of the initial plan, and therefore, the incorrect information should be crossed out with a pen (and initialed by the case manager).
- ❑ **Legal Status:** Choose the child's current legal status, based on the most current dispositional court order, and enter the effective date. (Select two options for youth who are adjudicated delinquent. When entering this information into the TN Kids permanency plan, the options must be entered one at a time by right clicking and choosing "add legal status.") The options are:
 - Temporary Custody (if the child's parents' rights have not been terminated)
 - Partial Guardianship (if one of the child's parent's rights have been terminated)
 - Guardianship (if both of the child's parents' rights have been terminated)
 - Indeterminate (if the youth is adjudicated delinquent and has an indeterminate commitment to state custody)
 - Determinate (if the youth is adjudicated delinquent and has a determinate commitment to state custody)
 - Voluntary Placement (if the child's parents voluntarily and temporarily placed the child in state custody)
- ❑ **Prior Custody:** Information for this section will be automatically derived from the system, if TN Kids has a record of prior custody episodes. If TN Kids is missing information, and/or the child is known to have been in the custody of the public child welfare agency in another state, the information should be manually entered. Include, at a minimum, the dates the child entered and exited custody, location(s) the child was in custody (county and state), and the reason(s) the child previously entered custody. If the child does not have a history of prior custody episodes, manually enter, "no prior custody history."
- ❑ **Child Support:** In the Court tab there is a sub tab called Child Support. In this Child Support sub tab there is a question, "DCS Petition Filed?" The dropdown choices are N/A, YES or NO. If DCS petitioned for child support, enter YES and then enter the child support order. Most of the D&N petitions that DCS files contain a request for child support, so there will not usually be a separate petition solely for child support. For those children committed during a hearing in which DCS did not file the petition for custody, but the court ordered child support, at the time of commitment, or for any other situation where child support is ordered without a DCS petition, select NO and enter the child support order. In cases where no petition is expected to be filed, such as a child in guardianship or a child whose family is homeless or indigent, NA would be the appropriate choice. If DCS has not yet filed and the court has not already ordered child support, you would also select NO. A support order is not entered. In cases where DCS elects not to request child support, a case recording should be entered into TN Kids to document the reason. It is possible to enter more than one child support order.

Section 1C: Permanency Goal

- ❑ **Goal Established Date:** Enter date when the goal/concurrent goals were first selected (may be earlier than plan date if this is a revised plan).
- ❑ **Goal Target Date:** Enter date when the permanency goal is expected to be achieved. Do not automatically enter a date 12 months from the custody date, but rather estimate the date based on the developed action plan(s).

- ❑ **Permanency Goal:** The permanency goal(s) should be chosen during the child and family team meetings, and checked on each page of Section 9 on the hard copy of the plan. Following the development of the permanency plan, the goal(s) should be entered into Tn Kids. If this is entered incorrectly, the plan will have to be deleted and a new plan created. When revising a permanency plan, the goal can be changed once from that which is automatically brought forward from the previous plan.
- ❑ **Goal Change Reason:** This narrative field is enabled only for revised plans that have a different permanency goal from the most recent active plan.

Section 1D: Family Information

- ❑ **Mother:** The system will derive this information for anyone connected to this child in Tn Kids with a relationship of birth mother, adoptive mother, and step-mother. However, if the mother's parental rights have been terminated and recorded as such in TN Kids, her information will not derive as having a "mother" relationship.
- ❑ **Father:** The system will derive this information for anyone connected to this child in Tn Kids with a relationship of birth father, legitimated father, putative father, legal father, adoptive father, and step-father. However, if the father's parental rights have been terminated and recorded as such in TN Kids, or if a putative father has not been indicated as having legal rights in TN Kids, his information will not derive as having a "father" relationship.
- ❑ **Other Persons:** Information regarding everyone who is established on any of the child's intakes in the TN Kids case record will automatically be derived by the system into this section, with the exception of those with a mother or father relationship and parental rights. Persons not associated with the child's permanency plan may be deleted from the plan prior to printing. The foster parents will be listed twice (due to having two relationships to the child in TN Kids), however, the duplicate entry can be deleted. For each person displayed in the "other person" section, and who is 18+ years old, you must select the type of resource s/he is for the child. More than one type may be selected. The options are:
 - Placement (the child is currently placed in this person's home or plans are to move the child to this person's home)
 - Visiting (this person visits the child or allows the child to visit in his/her home, and may or may not provide respite care)
 - Other (briefly describe the child's current relationship and purpose of contact with this person, i.e. mentor)
- ❑ **Note:** All persons with parental rights must be included in the permanency plan, regardless of the permanency goal. A person with parental rights to the child should not be deleted from the permanency plan, even if that person's whereabouts are unknown or even if that person has expressly or indirectly indicated that s/he does not wish to be involved.
- ❑ **Note:** If there is a real or perceived threat to an individual posed by another member of the child and family team that makes the inclusion of the individual's name, address, and phone number unwise, the information may be redacted from the hard copy of permanency plan. Consult with the DCS attorney in such cases.

Section 2: Reasons for Custody

- ❑ In this narrative field, concisely describe the specific event/conditions that led to the child being placed in state custody. Efforts made by the Department (including through CSA and other contractors) to prevent state custody must also be described.

Section 3: Placement History

- ❑ All information in this section will be derived from the system.

Section 4: Health

- ❑ **Primary Care Physician:** The system will derive this information from the Physicians tab in the child's medical module. If a primary care physician is not designated in the system, the provider name from the most recent EPSD&T medical screening will be derived.
- ❑ **Managed Care Organization (MCO):** The system will derive this information from the Benefits Summary. However, if no information is available to be derived, then it can be manually entered.
- ❑ **Behavioral Health Organization (BHO):** The system will derive this information from the Benefits Summary. However, if no information is available to be derived, then it can be manually entered.
- ❑ **Child's Known Medical Problems:** The system will derive this information.
- ❑ **Current Medications:** The system will derive this information.
- ❑ **Immunizations:** The system will derive this information.
- ❑ **Most Recent EPSD&T and Dental Screenings:** The system will derive this information. You must, however, indicate if the derived screening results were available and considered in the development of this plan. If the letter from the health department confirming results is available, then the letter must be attached to the plan before submission to juvenile court. If the results were not available at the time of the permanency plan child and family team meeting, however when received, the results required a decision or change to the permanency plan, then the child and family team meeting must be reconvened. If the results were not available at the time of the permanency plan child and family team meeting, however when received, the results did not require a decision or change to the permanency plan, then the plan will be revised to include the letter confirming results and will be resubmitted to the court and copies provided to the parties.
- ❑ **Other Relevant Health Information:** Enter relevant health information that is not documented elsewhere in the permanency plan. This information may include a parent's diagnosis, if it is, or may become, important to the child's health history. It is acceptable to include HIV status, if relevant to the plan.

Section 5: Education

- ❑ **5A.1. Educational Providers While in State Custody:** The system will derive this information.
- ❑ **5A.2. Educational Provider Prior to State Custody:** This refers to the one school that the child was enrolled in just prior to entering custody. The system will derive this information, if it is in the TN Kids record. If it is not, then the case manager must enter the information into the TN Kids record and then refresh the information on the permanency plan (prior to printing the template for the permanency plan child and family team meeting).
- ❑ **5B. Explanation Regarding Change in School:** This field will only be required if the child had to change schools as a result of being placed into state custody. Document the reason a placement in the same school district was not made (if that is the case), and/or the reason accommodations weren't made to transport the child to the previous school.
- ❑ **5C. School Records Requested/Received:** If the child's school records have been both requested and received, then choose "yes." If the child's school records have been requested, but not received, then chose "no" and enter the date that the records were requested. If the child's records were not requested (and therefore not received), then choose "no" and explain in the narrative field. If the child is not yet school age, then specify that is the reason the records were not requested. (Note: a request for school records should be faxed within one day of custody. If it has been more than three days since the school received the request for records, it is during the academic year and the records have not yet been received, contact the Regional Education Specialist for assistance. Also note: if the child is receiving special education services, the school cannot withhold records for fees owed, etc. If the child is receiving regular education services, and the records are being held for fees owed, the payment of fees can be made through flexible funds.)

- ❑ **5D. Grade Child is Currently Attending:** Enter the grade level at which the child is currently receiving educational services, or would be receiving educational services if s/he were in school (if currently between school years, or if AWOL, or if dropped out).
- ❑ **5E. Child's Grade Level Performance:** In comparison to the grade entered in 5D, indicate if the child is performing at, above, or below the expected level. In the explanation field, indicate what subjects/skills are an issue if functioning is above or below his/her grade level. Further, if the child's grade level has been accelerated or if previous denial of promotion to the next grade level has led to the child's grade level (from 5D) being inconsistent with his/her chronological age, then please note that here.
- ❑ **Special Education:** The system will derive this information.
- ❑ **Other Relevant Educational Information:** Use this field to record any information related to the child's educational history/needs that is not included elsewhere. This may include, but is not limited to, frequent medical and mental health appointments that will require absences from school, the need for or provision of tutoring services, and educational goals (college track/ vocational track, special education diploma, GED, etc.).

Section 6A: Appropriate Services

- ❑ This section is required by federal law to address the type of placement and plan for assuring that the child/youth receives safe and proper care in the least restrictive (most family-like) and most appropriate setting available and in close proximity to the parent's home, consistent with the best interest and special needs of the child/youth. Describe how the placement/service level decision meets this requirement, based on the assessment of the child and family's needs. If the appropriate placement/service is not being provided, explain why not.

Section 6B: Placement Outside Home Region

- ❑ If the child is placed outside of his/her home region, explain why that placement is in his/her best interest, and what efforts were made to place the child closer to home, if applicable.

Section 7A: Visitation

- ❑ **Court Order:** Indicate whether or not there is a court order that addresses the parents' visitation with the children.
- ❑ **Assuring Communication / Visitation Limitations:** For each parent (if parental rights have not been terminated) and sibling (and others persons who have a significant relationship with the child), list their name and indicate what type of contact will be supported/allowed. The options are: supervised visits, unsupervised visits, phone calls, letters, or no contact allowed. More than one option may be selected for each person. If there are limitations on a person's contact with the child, then justification for those limitations must be documented in the narrative field. If there are no limitations, then "none" should be recorded in the narrative field.

Section 7B: Parent's Responsibilities Regarding Visitation

- ❑ Document the expectations established for the parent(s) regarding visitation. Examples: visitation schedule, preparation the parent is to do (bringing healthy snacks, books/toys, a packed diaper bag, etc.), transportation arrangements (if parent is responsible), who/how to notify if the parent will be late or unable to attend, etc.

Section 7C: Department's Responsibilities Regarding Visitation

- ❑ Document how DCS staff will support the visitation. Examples: providing supervision, assisting with transportation, documentation, coaching the parent on effective and developmentally appropriate interaction with the children, etc.

Section 7D: Provider/Agency's Responsibilities Regarding Visitation

- ❑ Document how Provider/Agency staff will support the visitation. Examples: providing supervision, assisting with transportation, documentation, coaching the parent on effective and developmentally appropriate interaction with the children, etc.

Section 7E: Relative, Foster Parent and Other Resource's Responsibilities Regarding Visitation

- ❑ Document how a relative, foster parent, or other person will support (or participate in) the visitation. Examples: providing supervision, assisting with transportation, preparing the children for the visit, advising the case manager of any change in the children's behavior related to visitation, alerting the parent and case manager of additional opportunities for contact with the children (i.e. school events, medical appointments, sports events, birthday celebrations), etc.

Section 8: Child and Family Strengths and Needs

- ❑ Strengths: Record the child and family's strengths that were identified during the child and family team meeting(s) that may facilitate safety, permanency, and well-being for the child and the family.
- ❑ Needs: Record the child and family's needs that were identified during the child and family team meeting(s) that are related to safety, permanency, and well-being for the child and the family.

Section 9: Action Plan for Permanency

- ❑ Desired Outcome: State in positive, observable terms what the behavior or circumstance will be when the outcome is achieved. (Example: Desired Outcome #1: Mrs. Kimberly Jones, mother, will provide developmentally appropriate supervision for Laurie at all times.) Important: This section should not include a specific service/intervention, but rather, what the resulting change of the service/intervention is expected to be.
- ❑ Actions Needed to Achieve Desired Outcome: State in clear, concrete, behaviorally specific, measurable terms what actions must be taken to achieve the desired outcome. The action steps should be written in the order that they will take place, and should be outlined using small letters. (Example: 1a: Mrs. Kimberly Jones will create a list of available day care options for Laurie, and will discuss these options with Ms. Barbara Wright, case manager. 1b: Mrs. Kimberly Jones will select a day care provider and make arrangements for Laurie to be cared for by the provider upon Laurie's return to Mrs. Kimberly Jones' home.)
- ❑ Expected Achievement Date: Indicate when each action step should be completed by referencing the corresponding letter from the action steps section.
- ❑ Responsible Person(s): Indicate who is responsible for each action step by referencing the corresponding letter from the action steps section.
- ❑ Note: Each permanency plan will have outcomes and action steps related to child's needs that must be met while in custody. Other outcomes and action steps will be documented on the permanency pages and should be separated by permanency goal (if there are concurrent goals). On the template or permanency plan that is printed prior to the permanency goal being entered into Tn Kids, all five goals will be displayed at the top of each page of the "Action Plan for Permanency". Please place a checkmark in the box for the permanency goal to which the outcome on that page is related.
- ❑ Note: Independent living issues must be specifically addressed on the child's needs and goals page, if the child is age 14 years or older.

Section 10: Agreements and Signatures

- ❑ 10A. Child Agreement: If the child is 12 years in age or older, he/she must be included in the development of the permanency plan (unless it has been documented that it is not possible or is not in the child's best interest). A child younger than 12 years may also participate in the development of his/her permanency plan, if deemed appropriate.

- ❑ 10B. and 10C. Parent Agreement: Ask each parent to respond to agree or disagree (or indicate N/A) to each statement. If the parent checks “No or N/A”, ask him/her to explain the narrative field.
- ❑ Signature of Participants: Persons who participate in the development of the permanency plan and/or who have specific responsibilities outlined in the permanency plan should be given an opportunity to review and sign the permanency plan. All parties to the case, the foster parents (if applicable), and the contract agency staff (if applicable) must be given a copy of the permanency plan.
- ❑ Note: The same version (handwritten or typed) of the permanency plan that will be submitted to court must be the one that is signed by the participants and copied/distributed to participants. Signatures may be collected after the conclusion of the child and family team meeting if all parties were not present and/or if the permanency plan is to be typed prior to submitting it to court.

VICTIM'S COMPENSATION FOR CHILDREN YOUR CLIENT MAY BE ELIGIBLE!*

Criminal Injury Compensation in TN

Under TN law, victims of crimes may be eligible for monetary compensation from the state's Criminal Injury Compensation Fund and attorney's fees may be paid to attorneys representing the claimant. (See T.C.A. Title 29, Chapter 13)

- Children can be eligible for compensation both as victims of crime and as dependents of crime victims.
- If the child is the actual victim, the statute of limitations does not begin to run until the child reaches the age of majority.

PLEASE REFER TO T.C.A. Title 29, Chapter 13, TO DETERMINE IF YOUR CLIENT IS ELIGIBLE FOR VICTIM'S COMPENSATION.

If Your Client is Eligible:

- File an application for Criminal Injury Compensation on behalf of your client with the Claims Administration of the state treasury department.
 - The forms, instructions and frequently asked questions can be found on the website: www.treasury.state.tn.us/injury

If Your Client's Application is Successful:

- You will receive a letter from the Claims Administration containing instructions on how to proceed once you have received your client's compensation check.
 - This packet contains sample copies of: (1) a petition to establish a trust fund, (2) an order to establish a trust fund, (3) a motion to encroach, and (4) an order to encroach.
- File a claim for attorney's fees with the Claims Administration. (Note: Attorney's fees will **not** be paid by the AOC for filing Criminal Injury Compensation Claims.)

Tips for Filing a Victim's Comp. Claim for a Child:

- The legal guardian must sign the application as claimant for a minor victim, pursuant to TCA 29-13-102(b).
- If a child is in state custody and the parent or guardian is unavailable, a representative of DCS can sign as the claimant and their social security number will not be required.
- The guardian ad litem **cannot** sign the application as the claimant.
- There is no requirement for conviction or adjudication of the perpetrator in order for the victim to be eligible for compensation.

This information sheet should not be used as a substitute for reading the statute governing criminal injury compensation, T.C.A. Title 29, Chapter 13. If you have any questions regarding Criminal Injury Compensation please refer to the website listed above or call the Claims Division at 615.741.2734.

Examples of cases where child victims have received victim's compensation:-*

*Prepared by the Legal Division of the Tennessee Department of Children's Services.

Scenario 1

Child is now 12 and the GAL learns about disclosure of past abuse while going through DCS file. At age 8 the child disclosed sexual abuse by two men, known only as Uncle Dave and Uncle Ron, that happened when she was four years old. GAL files two separate victim's compensation claims (because there were two perpetrators) for pain and suffering. Since there is documentation in the DCS files, victim's compensation pays the maximum award of \$3,000 pain and suffering for one count of the claims. Claims Administration states that the abuse happened at the same time and the perpetrators acted in concert with each other since there is no documentation otherwise. So only one claim is paid for pain and suffering due to sex abuse.

Scenario 2

Male child is placed in state custody for dependency and neglect at age 6. While in a foster home child is raped by a teenage foster child in the same home. Child is later sexually abused on two additional occasions by other perpetrators in different settings. GAL learns of the abuse while reviewing the file when child is 15. GAL files 3 separate victim's compensation claims and all are paid at maximum award of \$3,000 each for pain and suffering.

Scenario 3

Child's mother is killed in child's presence by mother's boyfriend. GAL files claim for victim compensation based upon the death of the mother. Child is awarded \$20,000.00 for pecuniary loss. Funeral home is paid for funeral expenses.

Scenario 4

Six year old girl is raped by her mother's boyfriend in front of her brothers, ages 5 and 4. After the rape boyfriend beats the boys. GAL files claims of sexual abuse on all three children stating that the boys were victims of sexual abuse as well as their sister because they were forced to view the rape. Victim's compensation grants female child's claim for \$3,000.00 but denies that boys were victims of sexual abuse - only of physical abuse. GAL appeals decision to commissioner of claims and boys are awarded \$500.00 each.

Scenario 5

Female, age 17, alleges that her stepfather has raped her. Stepfather denies allegations but after going through the Juvenile Court and criminal court process, stepfather goes on a rampage at home chasing the stepdaughter, his biological daughter and wife through the house. Stepfather finally shoots himself in the head and kills himself on the back porch. Victim's compensation is filed on the stepdaughter and she is awarded \$3,000 - maximum for pain and suffering of sexual abuse, plus is reimbursed for counseling not paid for by private insurance and for time that she missed from work due to the abuse and attending counseling.

*Prepared by the Legal Division of the Tennessee Department of Children's Services.

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

IN THE MATTER OF:

A CHILD UNDER THE AGE OF 18 YEARS

)
)
)
)
)

DOCKET NO: _____

=====

PETITION TO ESTABLISH TRUST FOR BENEFIT OF THE MINOR CHILD

=====

Comes now the Petitioner, _____, (name and relationship to the child) and would move this Honorable Court to establish a trust for the benefit of the above captioned minor child.

The Petitioner would state that the sum to be placed in the Juvenile Court Clerk's Office is \$_____ and that this money represents a Criminal Injuries Compensation Claim awarded by the Tennessee Claims Commission (or the Division of Claims Administration) to be used for the benefit of the minor child.

The Petitioner respectfully requests that this sum be deposited by the clerk in an interest bearing account and that this sum or any part thereof be turned over to the minor child upon his/her reaching the age of majority or by further orders of this Court. The child's social security number is _____. The child's date of birth is _____ and the child's present address is _____.

Respectfully submitted,

Petitioner

Address and phone number

OATH

STATE OF TENNESSEE, COUNTY OF _____

I, _____, being duly sworn according to law, make oath that the facts stated in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Petitioner

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

IN THE MATTER OF: _____) DOCKET NO: _____
_____))
_____))
_____))
A CHILD UNDER THE AGE OF 18 YEARS)

=====

ORDER ESTABLISHING TRUST FOR THE BENEFIT OF THE MINOR CHILD

=====

It appearing to the Court that a Petition has been filed to establish a trust for the minor child and that the same was filed with the Court on _____(date) and the sum of \$_____ was tendered to the Juvenile Court Clerk on _____(date).

It is therefore ORDERED, ADJUDGED AND DECREED that a trust in the amount of \$_____ shall be established for the benefit of the above captioned minor child.

It is further ORDERED, ADJUDGED, AND DECREED that these sums shall be placed in an interest bearing account by the Juvenile Court Clerk and that the account shall be placed at _____ (name of local bank) and that said sum shall be held in trust for the benefit of the minor child.

It is further ORDERED, ADJUDGED, AND DECREED that said sums or any part thereof shall be returned over to the minor child at the time he/she reaches majority and that a motion to encroach this Trust must be filed with this Court by an appropriate individual in the event it becomes necessary to obtain these funds or any part thereof before the child reaches majority.

Entered on this the _____ day of _____, 20__.

JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Order was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

[List the names and addresses of each attorney/person/party noticed.]

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

IN THE MATTER OF: _____)

DOCKET NO: _____)

_____)
A CHILD UNDER THE AGE OF 18 YEARS)

=====

MOTION TO ENCROACH

=====

Comes now the Petitioner, _____ (name and relationship to child) and would move this Honorable Court to encroach upon the corpus of the trust being held in the Juvenile Court Clerk's Office for the benefit of the minor child.

Petitioner would state that there is currently the sum of \$ _____ being held in the Juvenile Court Clerk's Office for the benefit of the minor child and there is a current need for the amount of \$ _____. The specific need(s) for which funds are sought is as follows:

Respectfully Submitted,

(name of person submitting)

(address)

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:
[List the names and addresses of each attorney/person/party noticed.]

This motion shall be heard on the _____ day of _____, 2____

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

IN THE MATTER OF: _____) DOCKET NO: _____
_____))
_____))
A CHILD UNDER THE AGE OF 18 YEARS)

=====

ORDER TO ENCROACH

=====

This cause came to be heard before the Honorable _____, Judge for the Juvenile Court of _____ County, Tennessee on the _____ day of _____, 20__ upon the Motion to Encroach filed by _____.

After hearing testimony from the Movant and considering the record as a whole, it was the opinion of the Court that the Motion to Encroach should be granted /not granted.

It is therefore ORDERED, ADJUDGED AND DECREED that this cause be dismissed.
OR

It is therefore ORDERED, ADJUDGED AND DECREED that the Petition be granted and that the sum of \$_____ be awarded to _____ (custodian, health care provider, school or other appropriate payee), to be used for the following purposes:

The Clerk shall disburse the funds accordingly.

Entered on this the _____ day of _____ 20__.

JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:
[List the names and addresses of each attorney/person/party noticed.]

POWER OF ATTORNEY FOR CARE OF A MINOR CHILD*

Use of this form is authorized by T.C.A. § 34-6-301 et seq. Completion of this form, along with the proper signatures, is sufficient to authorize enrollment of a minor in school and to authorize medical treatment. However, a school district may require additional documentation/information as permitted by this section of Tennessee law before enrolling a child in school or any extracurricular activities. *Please print clearly.*

Part I: To be filled out and/or initialed by parent(s).

1. Minor Child's Name _____
2. Mother/Legal Guardian's Name & Address

3. Father/Legal Guardian's Name & Address

4. Caregiver's Name & Address

5. ☐ Both parents are living, have legal custody of the minor child and have signed this document;
OR
☐ One parent is deceased;
OR
☐ One parent has legal custody of the minor child and both parents have signed this document and consent to the appointment of the caregiver;
OR
☐ One parent has legal custody of the minor child, and has sent by Certified Mail, Return Receipt requested, to the other parent at last known address, a copy of this document and a notice of the provisions in § 34-6-305; or the non-custodial parent has not consented to the appointment and consent cannot be obtained because _____.
6. Temporary care-giving authority regarding the minor child is being given to the caregiver because of the following type of hardship (**check at least one**):
☐ the serious illness or incarceration of a parent or legal guardian;
☐ the physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided;
☐ the loss or uninhabitability of the child's home as a result of a natural disaster;
☐ the need for medical or mental health treatment (including substance abuse treatment) by the parent or legal guardian; or,
☐ other (please describe) _____
7. ☐ I/We the undersigned, authorize the named caregiver to do one or more of the following:
☐ enroll the child in school and extracurricular activities (including but not limited to Boy Scouts, Boys & Girls Club),
☐ obtain medical, dental, and mental health treatment for the child, and
☐ provide for the child's food, lodging, housing, recreation and travel.
☐ I/We grant the following additional power to the named caregiver: _____.

* To obtain this form in Spanish contact the Court Improvement Program.

8. () I/We understand that this document does not provide legal custody to the caregiver. If at any time I/we disagree with a decision of the named caregiver or choose to make any healthcare or educational decisions for my/our child, I/we must revoke the power of attorney, in writing, and provide written documentation to the health care provider and the local education agency (i.e., school).
9. () I/We understand that despite the execution of this document, I/We may retain certain rights under Federal law (i.e., the Individual with Disabilities Education Act, etc.).
10. () I/We understand that this document may be terminated in another written document signed by either parent with legal custody or by any order of a court with competent jurisdiction.

Part II: To be initialed by caregiver.

11. () I understand that this document, properly executed, gives me the right to enroll the minor child in the local education agency serving the area where I reside.
12. () I understand that this document does not provide me with legal custody.
13. () I understand that, prior to enrollment, the local education agency may require documentation of the minor child's residence with a caregiver and/or documentation or other verification of the validity of the stated hardship.
14. () I understand that, except where limited by federal law, I shall be assigned the rights, duties, and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian pursuant to Tennessee Code Annotated Title 49.
15. () I understand that, if the minor child ceases to reside with me, I am required by law to notify any person, school or health care provider to whom I have given this document.

Part III: To be initialed by parent(s) and caregiver.

16. () () We understand that, by accepting the power of attorney, if we enroll a student in a school system while fraudulently representing the child's current residence or the parents' hardship or circumstances for using the power of attorney, either or both of us is liable for restitution to the school district for an amount equal to the per pupil expenditure for the district in which the student is fraudulently enrolled. Restitution shall be cumulative for each year the child has been fraudulently enrolled in the system and may include costs and fees related to litigation.

I/We declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

STATE OF TENNESSEE)

COUNTY OF _____)

Date: _____

Mother/Legal Guardian

The Mother/Legal Guardian, _____, personally appeared before me this ____ day
 of _____, ____.

NOTARY PUBLIC

My commission expires:

STATE OF TENNESSEE)
COUNTY OF _____)

Date: _____

Father/Legal Guardian

The Father/Legal Guardian, _____, personally appeared before me this _____ day of _____, _____.

NOTARY PUBLIC

My commission expires:

STATE OF TENNESSEE)
COUNTY OF _____)

Date: _____

Caregiver

The Caregiver, _____, personally appeared before me this _____ day of _____, _____.

NOTARY PUBLIC

My commission expires:

NOTICE TO THE LOCAL EDUCATION AGENCY AND/OR HEALTH CARE PROVIDER:

Pursuant to T.C.A. § 34-6-308, no person, school official or health care provider who acts in good faith reliance on a power of attorney for care of a minor child to enroll the child in school or to provide medical, dental or mental health care, without actual knowledge of facts contrary to those authorized, is subject to criminal or civil liability to any person, or is subject to professional disciplinary action for such reliance. This section shall apply even if medical, dental, or mental health care is provided to a minor child or the child is enrolled in a school in contravention of the wishes of the parent with legal custody of the minor child, as long as the person, school official or health care provider has been provided a copy of an appropriately executed power of attorney for care of a minor child, and has not been provided written documentation that the parent has revoked the power of attorney for care of a minor child.

Additionally, pursuant to T.C.A. § 34-6-310, a person who relies on the power of attorney for care of a minor child has no obligation to make any further inquiry or investigation. Nothing in this part shall relieve any individual from liability for violations of other provisions of law.

REVOCATION OF POWER OF ATTORNEY FOR CARE OF A MINOR CHILD*

As provided for in T.C.A. § 34-6-301 et. seq., revocation of any previously executed Power of Attorney for Care of a Minor Child must be in writing. Properly executed, this form meets all requirements of T.C.A. §34-6-301 et. seq. to properly revoke said Power of Attorney for Care of a Minor Child. **Please note, however, that use of this form is recommended, but not required to revoke a previously executed Power of Attorney for Care of a Minor Child.**

Part I: To be filled out by parent(s) of minor child:

1. Minor Child's Name _____
2. Mother/Legal Guardian's Name & Address _____

3. Father/Legal Guardian's Name & Address _____

4. Caregiver's Name & Address _____

Part II: To be filled out by the parent(s).

I, _____, hereby revoke the Power of Attorney for Care of a
 Name of Parent(s)

Minor Child for the child listed above in Part I, which was previously executed on

_____ and given to _____ to act said minor child's

Date

Name of Caregiver

Caregiver. All rights, power, and authority previously granted to said Caregiver pursuant to said Power of Attorney for Care of a Minor Child are hereby revoked, effective immediately. I understand that I must provide a copy of this Revocation to any health care provider and/or school that previously received a copy of the Power of Attorney.

IN WITNESS WHEREOF, I/We sign this Revocation of Power of Attorney for Care of a Minor Child and declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

 * To obtain this form in Spanish contact the Court Improvement Program.

STATE OF TENNESSEE)
COUNTY OF _____)

Mother/Legal Guardian

Date: _____

The Mother/Legal Guardian, _____, personally appeared before me this ____ day
of _____, 20__.

NOTARY PUBLIC

My commission expires:

STATE OF TENNESSEE)
COUNTY OF _____)

Father/Legal Guardian

Date: _____

The Father/Legal Guardian, _____, personally appeared before me this ____ day of
_____, 20__.

NOTARY PUBLIC

My commission expires:

PART V: APPENDICES**Contents**

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EMERGENCY REMOVAL HEARING*

The preliminary protective hearing must take place within 72 hours, excluding non-judicial days, but no longer than 84 hours after the child's removal. T.R.J.P. 6(c). The evidentiary standard at this proceeding is probable cause. T.C.A. § 37-1-128(b)(2).

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

Key decisions the court should make after testimony:

- ☐ Has the agency made reasonable efforts to avoid removal of the child?
- ☐ Is there probable cause to believe that the allegations in the petition can be sustained?
- ☐ Should the child be returned safely home immediately or kept in foster care prior to the trial?
- ☐ What services will allow the child to remain safely at home?
- ☐ Are responsible relatives or other adults available?
- ☐ Is the placement proposed by the agency the most family-like and closest to home?

The affidavit of reasonable efforts should answer the following questions:

- ☐ Was removal of the child necessary in order to protect the child, and, if so, what are the specific risks to the child that necessitated the removal;
- ☐ What specific services are necessary to allow the child to remain in or return to the home;
- ☐ What services has DCS provided to assist the family and child so as to prevent removal or to reunify the family;

- ☐ Has DCS provided services to the family and child, and, if not, what are the specific reasons why services have not been provided.
- ☐ Has a permanency plan been provided?
- ☐ Will implementation of the plan and the child's continued well-being be monitored? By whom?
- ☐ Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?

Additional activities:

- ☐ Review notice to missing parties
- ☐ Serve parties with copy of petition
- ☐ Advise parties of rights

If child is placed outside the home:

- ☐ Describe who is to have custody and where the child is to be placed;
- ☐ Specify why continuation of child in the home would be contrary to child's welfare (best interests);
- ☐ Specify whether reasonable efforts have been made to prevent removal
- ☐ Describe services provided, if any, and why placement is necessary;
- ☐ Specify terms and conditions for parental visitation and sibling visitation;
- ☐ Specify financial support of the child.

Schedule time and date of:

- ☐ Adjudication
- ☐ Ratification of permanency plan (if child is placed in DCS custody)

***The hearings checklists are adapted from Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases. National Council of Juvenile and Family Court Judges. 1995.**

RATIFICATION OF THE PERMANENCY PLAN

The court must review the proposed permanency plan, make any modifications and ratify the plan within 60 days of foster care placement. T.C.A. § 37-2-403(a)(2)(A). DCS must prepare the plan within 30 days of foster care placement. T.C.A. § 37-2-403(a)(1).

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

Key areas of inquiry:

- ☐ Whether the plan as submitted is in the best interests of the child;
- ☐ Whether the goal stated in the plan is the appropriate goal for the child;
- ☐ Whether the plan includes a statement of specific responsibilities for the parent;
- ☐ Whether the responsibilities of the parents listed in the plan are reasonably related to achieving the stated goal;
- ☐ Whether the plan includes a statement of responsibilities for DCS;
- ☐ Whether the responsibilities of DCS listed in the plan are reasonably related to achieving the stated goal;
- ☐ Whether the plan includes definition of abandonment and the criteria and procedures for terminating parental rights;
- ☐ Whether the plan addresses specific reasons for placement for any goal other than reunification, placement with relatives, or adoption.

The court shall notify parents or legal guardians:

- ☐ Of the law relating to abandonment pursuant to T.C.A. § 36-1-102;
- ☐ That the consequences of failure to visit or to support the child will be termination of parental rights;
- ☐ That they have a right to counsel and that counsel will be appointed for them if they are indigent.

The court's options are:

- ☐ To ratify the plan as provided by DCS if the court finds the plan to be in the best interests of the child;
- ☐ To order modifications to the plan to be made by DCS;
- ☐ To order DCS to draft a new plan and submit it within 30 days, but not to exceed 60 days of foster care placement.

ADJUDICATORY HEARING

The adjudication must be scheduled within 30 days of the child's placement, if the child has been removed from the home, or within 90 days if the child is not in custody. T.R.J.P. 17(a). The evidentiary standard at the adjudicatory hearing is clear and convincing evidence. T.C.A. § 37-1-129(a). See T.C.A. §§ 37-1-102(b)(12) and 36-1-113(h) for statutory grounds for an adjudication of dependency and neglect. See T.C.A. §§ 37-1-166(g) and 36-1-113(h) for bases for reasonable efforts determinations.

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

- ☐ Ensure the agency is taking prompt steps to evaluate relatives as caretakers;
- ☐ Order the alleged perpetrator out of the home and to have no contacts with the child;
- ☐ Direct the agency to continue its efforts to notify noncustodial parents;
- ☐ If child is in foster care prior to disposition, set terms for visitation, support and other intra-family communication.

The court's written findings of fact and conclusions of law at the adjudication hearing should:

Key decisions the court should make:

- ☐ Which allegations of the petition have been proven by clear and convincing evidence or admitted, if any;
- ☐ Whether there is a legal basis for continued court and agency intervention;
- ☐ Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family.

- ☐ Provide detailed findings that sustain the petition by clear and convincing evidence or dismiss the petition;
- ☐ List what specific services have been provided by DCS to prevent the need for removal of the child are needed to safely reunify the family;
- ☐ If child remains in DCS custody, provide detailed findings as to why it is contrary to the child's best interest to return home.

If the disposition does not occur within a short time after the adjudication, the court may need to:

- ☐ Determine the placement of child prior to disposition;
- ☐ Order further testing or evaluation of parents or child in preparation for the disposition;

Schedule time and date of:

- ☐ Disposition; or
- ☐ Review hearing; or
- ☐ Permanency hearing.

DISPOSITIONAL HEARING

The disposition must take place within 15 days of the adjudication if the child has been removed, and within 90 days in other cases. T.R.J.P. 18(a). The rules of evidence are relaxed for dispositional hearings. T.C.A. § 37-1-129(d).

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

When the agency recommends foster placement, an affidavit of reasonable efforts should contain:

- ☐ The specific risks to the child which necessitate removal;
- ☐ The specific services necessary to allow the child to remain in the home;
- ☐ What services have been provided to the family and the child to prevent removal or reunify the family;
- ☐ If the department has not provided services, a list of specific reasons why services were not provided;
- ☐ A description of the placement and where it is located;
- ☐ Proposed arrangements for visitation;
- ☐ Placement of siblings, and proposed arrangements for visitation.

Key decisions the court should make:

- ☐ The appropriate statutory disposition of the case and long-term plan for the child;
- ☐ The appropriate safe placement for the child;

- ☐ Whether the plan proposed by the agency reasonably addresses the problems and needs of child and parent;
- ☐ Whether the agency has made reasonable efforts to eliminate or prevent the need for placement; and

The court's written findings of fact and conclusions of law should:

- ☐ Determine the legal disposition of the case, including custody of the child, based upon the statutory options provided under state law;
- ☐ State the long-term plan for the child;
- ☐ When applicable, specify why continuation of the child in the home is contrary to the child's welfare;
- ☐ Determine whether there is a plan for monitoring the implementation of the permanency plan;
- ☐ When placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made;
- ☐ Specify whether reasonable efforts have been made to prevent removal or eliminate the need for placement;
- ☐ Specify terms of sibling and parental visitation;
- ☐ Specify parental responsibilities for child support;

Schedule time and date of:

- ☐ Review hearing; or
- ☐ Permanency hearing.

PERIODIC REVIEW HEARING

Periodic reviews occur within 90 days of foster care placement and at least every six months thereafter. T.C.A. § 37-2-404(b) They may be conducted by the court or by a Foster Care Review Board. T.C.A. § 37-2-406(a)(3).

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

Key decisions to be made:

- ☐ Whether there is a need for continued placement of a child;
- ☐ Whether the court-approved permanency plan remains the best plan for the child;
- ☐ Whether the agency is making reasonable efforts to rehabilitate and reunify the family;
- ☐ Whether services and responsibilities set out in the plan of care need to be clarified or modified due to changed circumstances;
- ☐ Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs;
- ☐ Whether the terms of visitation need to be modified;
- ☐ Whether any additional court orders need to be made to move the case toward successful completion;
- ☐ What time frame should be set forth as goals to achieve reunification or other permanent plan for the child.

The court's written findings of fact and conclusions of law should:

- ☐ State why the child is in need of continued placement, including the specific risks to the child;
- ☐ Explain whether and why family reunification and an end to court supervision continues to be the long-term goal;
- ☐ Determine whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;
- ☐ Specify whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;
- ☐ Order the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- ☐ Approve proposed changes in the permanency plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- ☐ Identify an expected date for final reunification or other permanent plan for the child;
- ☐ Make any orders necessary to resolve the problems that are preventing reunification or the completion of another permanency plan for the child.

Schedule time and date of:

- ☐ Further review, if necessary.
- ☐ Permanency hearing.

PERMANENCY HEARING

The first permanency hearing must be held within 12 months of the date of foster care placement, and no less frequently than every 12 months thereafter. Permanency hearings must be conducted by the court. T.C.A. § 37-2-409.

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

Key decisions to be made:

- ☐ Whether the child is to be returned home and on what specific date;
- ☐ Whether the custody of a child will be placed with a relative or other suitable person on a permanent basis;
- ☐ Whether the child will be legally freed for adoption and the date DCS is to file a petition to terminate parental rights;
- ☐ Whether the child will be placed in planned permanent living arrangement and why other goals are not appropriate for the child;
- ☐ If the child is 16 or older, whether independent living skills have been provided.

The affidavit of reasonable efforts should answer the following questions:

- ☐ Was removal of the child necessary in order to protect the child, and, if so, what are the specific risks to the child that necessitated the removal;

- ☐ What specific services are necessary to allow the child to remain in or return to the home;
- ☐ What services has DCS provided to assist the family and child so as to prevent removal or to reunify the family;
- ☐ Has DCS provided services to the family and child, and, if not, what are the specific reasons why services have not been provided.

The court's findings of fact and conclusions of law should specify:

- ☐ Which efforts were made by DCS to prevent removal of the child;
- ☐ Whether the circumstances leading to the removal of the child have been corrected;
- ☐ The frequency of recent visitation and its impact on the child;
- ☐ What efforts have been made to safely reunify the family;
- ☐ If the goal is adoption or other permanent living situation, which efforts, consistent with the goal, has DCS made to find place child;
- ☐ Facts and circumstances supporting a goal of termination;
- ☐ A plan to place the child for adoption.;
- ☐ A plan to ensure the stability of the placement.

Schedule time and date of:

- ☐ Further review, if necessary.

TERMINATION OF PARENTAL RIGHTS HEARING

Termination of parental rights must be found to be in the best interest of the child and must be based upon statutory grounds. T.C.A. § 36-1-113. For dependency and neglect cases, those grounds are listed at T.C.A. § 36-1-113(g). The standard of proof is clear and convincing evidence. T.C.A. § 36-1-113(g)(7)(B).

Persons who should be present:

- ☐ Judge or judicial officer
- ☐ Parents whose rights have not been terminated
- ☐ Relatives with physical custody
- ☐ Foster and pre-adoptive parents
- ☐ Age appropriate children
- ☐ Assigned caseworker
- ☐ Agency attorney
- ☐ Attorney for parents
- ☐ Legal advocate for child
- ☐ Court reporter/ suitable technology

Key decisions the court should make:

- ☐ Whether the statutory grounds for termination of parental rights have been satisfied.
- ☐ Whether termination is in the best interests of the child.

The court's written findings of fact and conclusions of law at the termination of parental rights hearing should:

- ☐ Indicate whether or not termination of parental rights is granted;
- ☐ Address whether the grounds for termination were satisfied and, if so, whether the termination was in the best interests of the child;
- ☐ Be sufficient for the purpose of appellate review;

Schedule time and date of:

- ☐ Further review, if necessary.

GLOSSARY OF SELECTED TERMS*

ABUSE: Exists when a child is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inaction of a parent, relative, guardian or caretaker. T.C.A. § 37-1-102(1).

AACWA: The Adoption Assistance and Child Welfare Act of 1980. Comprehensive federal legislation that outlined states' responsibilities in preventing removal of children and reunifying families through the use of reasonable efforts; required each child have a plan for achieving a permanency goal; enlarged the scope of judicial oversight in juvenile court proceedings; and provided support for families adopting special needs children. (P.L. 96-272)

ABANDONMENT: In juvenile court, the willful failure by a biological parent or legal guardian to visit (more than token visitation) or to provide financial support to a child for a period of more than four consecutive months. Abandonment is one of the legal grounds for termination of parental rights. T.C.A. § 36-1-102, 113.

ADJUDICATION/ADJUDICATORY HEARING: In child welfare proceedings, the trial stage at which the court determines whether allegations of dependency, abuse or neglect concerning a child are sustained by clear and convincing evidence, and, if so, are legally sufficient to support state intervention on behalf of the child; provides the basis for the state intervention into a family, as opposed to the disposition hearing which concerns the nature of such intervention.

ADOPTION: Social and legal process of establishing by court order the legal relationship between parent and child. T.C.A. § 36-1-102(3).

ADOPTION ASSISTANCE: Title IV-E Adoption Assistance program designed to assist states in finding adoptive homes for eligible children with special needs. This open-ended entitlement program provides funds to states to assist in providing ongoing financial and medical assistance for adopted children with special needs. Funds also support staff training and administrative costs.

ADOPTIVE PARENT: The person who has been made the legal parent of a child by the entry of an order of adoption under the provisions of the laws of a state, territory or foreign country. T.C.A. § 36-1-102(7).

AFDC: Aid to Families with Dependent Children. This federal funding source has been replaced by Temporary Assistance to Needy Families funding. See TANF.

AGENCY: A child welfare agency, regardless of whether such agency is licensed or approved, and includes the department of children's services. T.C.A. § 37-2-402.

APPEARANCE: In some jurisdictions, the first hearing in a child protection case in non-emergency situations.

* This section is reproduced from MacLean, Cindy, *Tennessee Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and A Plan for Improvements*, 1997, produced for the Tennessee Supreme Court and the U.S. Department of Health and Human Services, under the auspices of the Tennessee Court Improvement Program and the provisions of Section 13712 of Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993: Grants to State Courts.

ASFA: Adoption and Safe Families Act of 1997, amended AACWA. Federal legislation aimed at improving states' response to children and families in the child welfare system. ASFA shortened the time line for achieving permanency, required reasonable efforts be made to find a permanent placement for the child when reunification is not possible, identified cases in which reasonable efforts to prevent removal and reunify the family may not be required, and dictated circumstances under which states must file petitions to terminate parental rights. The act also created incentives for states to increase adoptions. (P.L. 105-89.)

BEST INTERESTS OF CHILD: The guiding principle of all juvenile court proceedings, "best interests" is also a legal determination made by the juvenile court that incorporates particularized findings unique to the child who is the subject of litigation.

BIFURCATED HEARINGS: Proceedings in which issues are tried or heard separately. In juvenile dependency and neglect cases, the adjudication and disposition may be bifurcated.

BIOLOGICAL PARENT: Person, either man or woman, who physically or genetically conceived the child who is the subject of the adoption or termination proceedings.

BRIAN A.: Federal class action lawsuit on behalf of children in foster care in Tennessee. Refers to order of federal district court that provides for improvements in the state agency's response to dependent and unruly children in foster care. (Brian A. v. Sundquist, 149 F. Supp. 2d 941 (2000))

CASA (COURT APPOINTED SPECIAL ADVOCATE): A specially trained volunteer appointed by the court, who conducts an independent investigation of child abuse, neglect or other dependency matters, and submits a formal report offering advisory recommendations as to the best interests of the child.

CHILD ABUSE: To hurt or injure a child by maltreatment. *See* ABUSE.

CHILD(REN): Any person(s) under eighteen years of age. T.C.A. § 36-1-102(11). [A person 18 years or older may not be committed to or remain in the custody of the Department of Children's Services by virtue of being adjudicated dependent and neglected or unruly. T.C.A. § 37-1-102(4)(C).]

CHILD DEPENDENCY: A type of case filed exclusively in juvenile court, where there are allegations that a child has been harmed or that conditions in the child's home place the child at substantial risk of serious and irreparable harm. T.C.A. § 37-1-102.

CLEAR AND CONVINCING EVIDENCE: An evidentiary standard in which the proof as presented at the trial or hearing has a high probability of being the truth. This standard requires more proof than a "preponderance of the evidence" standard, but less than "proof beyond a reasonable doubt."

CODIFY (CODIFIED): The process of putting rules and regulations concerning a certain subject into statutes.

COMMUNITY SERVICE AGENCY (CSA): Quasi-governmental agencies which contract with the Department of Children's Services to provide needed services to families and children within the community. Each region within the Department of Children's Services is served by a different CSA.

COURT: Chancery, circuit, or general sessions court, including juvenile, probate and criminal court. Often the term "court" is used interchangeably with "judge" or "referee," as in the statement, "The lawyer presented evidence to the Court."

CUSTODIAN: Person, other than legal guardian or parents, who takes on the role of parent to the child or person to whom temporary legal custody has been given by order of the court. T.C.A. § 37-1-102(7).

CUSTODY: Control and actual physical care of the child; includes the right and responsibility to provide for physical, mental, moral and emotional well being of the child. Custody does not exist by virtue of mere physical possession of the child. T.C.A. § 37-1-102(8).

DATE OF FOSTER CARE PLACEMENT: The original date on which the child is physically placed in foster care. T.C.A. § 37-2-402.

DCS: Department of Children's Services. The administrative agency in Tennessee that provides care and services to children in foster care and to children who are at risk of entering foster care. DCS strives to protect children from abuse and neglect; to provide prevention, early intervention, rehabilitative and educational services; to pursue appropriate and effective behavioral and mental health treatment; and to ensure that health care needs are met. T.C.A. § 37-5-102.

DELINQUENT CHILD: A child who has committed an act which would be considered a crime if committed by an adult, and is in need of treatment or rehabilitation.

DEPENDENT AND NEGLECTED CHILD: A child subject to the jurisdiction of the court because of abuse or neglect. T.C.A. § 37-1-102(12). See Child Dependency.

DIRECT REFERRAL: Process by which a foster care review board identifies an urgent issue that constitutes a risk of harm to the child or is a deterrent to reaching the permanency goal and brings it to the attention of the juvenile court. T.C.A. § 37-2-406(c)(1)(B).

DISPARATE TREATMENT: Differential treatment based upon a person's race, color, religion, sex, national origin, or disability.

DISPOSITION/DISPOSITIONAL HEARING: The stage of the juvenile court process in which, after finding that a child is within the jurisdiction of the court, the court determines who shall have temporary custody of the child. Evidentiary standards are relaxed.

DUE PROCESS: A course of legal proceedings that enforce and protect individual rights; typically refers to adequate notice of all court proceedings, the right to be represented by an attorney and opportunity to be heard.

EMANCIPATED: A legal term referring to a person who turns 18 years of age, or a person under the age of 18 who is totally self-supporting, as recognized by the court.

FLEX FUNDS: Funds provided through the Department of Children's Services to provide support services to children and families involved with the child welfare system.

FOSTER CARE: Temporary placement of a child in the custody of the Department of Children's Services for care outside the home of child's parents or guardian. Foster care ceases when the child is placed with individual(s) for purposes of adoption, or when petition to adopt is filed, or when the child is returned to or placed in care of the parents or relative. T.C.A. § 37-2-402(5).

FOSTER CARE REVIEW BOARD: A board of citizen volunteers appointed by the juvenile court to periodically review foster care cases. It serves the quasi-judicial function of advising the court concerning the status of the permanency process of each child in foster care. Depending upon the jurisdiction, the

board may review the cases of delinquents and status offenders in addition to abused and neglected children.

FOSTER PARENT: A person who has been trained to provide full-time temporary out-of-home care for children who cannot remain in their own home. T.C.A. § 36-1-102(21). *See* FOSTER CARE.

GUARDIAN: Person or entity, other than the parent of a child, appointed by a court as guardian as a result of surrender, parental consent, or termination of parental rights. The rights of a guardian of a minor child must be terminated by surrender or court action before an order of adoption can be entered. T.C.A. § 36-1-102(22)(C). Complete guardianship occurs only when all parental rights have been surrendered or terminated. T.C.A. § 36-1-102(23)(C)(I). Partial guardianship occurs pursuant to an order terminating less than all parental rights. T.C.A. § 36-1-102(23)(D)(ii).

GUARDIAN AD LITEM: In juvenile court, an attorney appointed by the court to represent the best interests of a child. *See* Tenn. Sup. Ct. Rule 40.

HOMETIES: A 4 - 6 week intensive program of services within the home intended to preserve the family and to prevent removal of the child from the home.

ICWA: Indian Child Welfare Act. Federal legislation aimed at protecting the best interests of American Indian children and promoting the stability and security of American Indian tribes and families. Established minimum federal standards for the removal of American Indian children from their families and the placement of such children in foster or adoptive homes that reflect the unique values of American Indian culture, and provided for assistance to American Indian tribes in the operation of child and family service programs. (P.L. 95-608)

INDEPENDENT LIVING ACT or FOSTER CARE INDEPENDENCE ACT: Also referred to as the John H. Chafee Foster Care Independence Program, increases funds to states to assist youths in making the transition from foster care to independent living; recognizes the need for special help for children ages 18 to 21 who have already left foster care; offers states greater flexibility in designing programs to help foster children achieve independence; and establishes accountability for states in implementing those programs. (P.L. 106-169.)

JUDGE: *See* COURT.

JURISDICTION: The power and authority of a court to hear a case or controversy, and the power to render a decision or judgment.

JUVENILE COURT: Court dealing with juveniles, includes general sessions courts and some chancery courts in Tennessee except in those counties and municipalities in which special juvenile courts are provided by law.

JUVENILE COURT REFEREE: Person appointed by the juvenile court judge to hear certain types of cases. Orders concerning surrenders and revocations issued by the referee do not require confirmation of the juvenile judge. However, a referee's order recommending termination of parental rights does require a confirmation order by the judge. T.C.A. § 36-1-102(14)(C).

KINSHIP FOSTER CARE PROGRAM: Foster care placement of a child in custody of DCS with a relative who has complied with the regulations that are applicable to other foster parents. The kinship foster parent may receive foster care board payments.

MEPA-IEP: The Multiethnic Placement Act of 1994 and the Interethnic Placement Provisions. Together, these federal laws prohibit delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of either the child or the foster or adoption parents. (P.L. 104-118)

NOTICE: In legal use, communication that is intended to apprise a person of a proceeding in which his interests are involved.

PARENT: The biological parent or legal guardian, except in cases when guardianship is held by an agency pursuant to a determination of abandonment or surrender of parental rights. T.C.A. § 37-2-402.

PARENTAL RIGHTS: Legally recognized rights and responsibilities to act as a parent, to care for, to name, and to claim custodial rights with respect to a child. T.C.A. § 36-1-102(36).

PETITION: A formal written request that a court consider action on a certain matter.

PERIODIC HEARING: *See* REVIEW HEARING.

PERMANENCY: While not specifically defined in the statutes, the concept of permanency stems from a belief that it is in a child's best interests to be placed as quickly as possible in a safe environment that the child has a reasonable expectation of calling "home" throughout his or her life. The process of permanency begins as soon as the child comes into custody.

PERMANENCY HEARING: A formal court proceeding designed to reach a decision concerning the permanent placement of a child; the time of the hearing represents a deadline within which the final direction of a case is to be determined. Permanency Hearings must be conducted by the court within twelve months of a child's placement in foster care.

PERMANENCY PLAN: A written plan for a child placed in foster care with the department of children's services or another agency, which lists the reasons the child is brought into custody and which identifies a permanent goal for the child. The plan specifies the responsibilities of the parties, including the parents and the department, which must be accomplished in order to achieve the stated goal. T.C.A. § 37-2-402(5).

PLAN OF CARE: *See* PERMANENCY PLAN. The term Plan of Care is replaced under ASFA with the term Permanency Plan.

PLANNED PERMANENT LIVING ARRANGEMENT (PPLA): A goal for children in foster care for whom DCS has made every reasonable effort to return the child home, to place the child with appropriate family members, or to place the child for adoption. The person to whom DCS proposes to assign permanent caregiver status has demonstrated a commitment to assume long-term responsibility for the child.

PRELIMINARY PROTECTIVE HEARING: The first court hearing in a juvenile abuse or neglect case, referred to as emergency removal hearing; occurs either immediately before or immediately after a child is removed from the home on an emergency basis. The preliminary hearing is held within 3 days of the child's removal from the home. The judge must determine whether the Department has established probable cause to believe the allegations in the petition, that the child was in imminent danger of irreparable harm, and that removal was the least restrictive alternative available.

QUARTERLY PROGRESS REPORT: A report prepared by DCS that details the progress made by the department, parents, and child toward achieving the permanency goal for the child. T.C.A. § 37-2-404.

REASONABLE EFFORTS: The exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. T.C.A. § 37-1-166(g). The department must make reasonable efforts to prevent removal of the child, and to reunify the family if the child is removed. The court must make reasonable efforts findings at every dependency hearing.

RELATIVE CAREGIVER PILOT PROJECTS: Projects established in Davidson, Shelby and the Upper Cumberland counties to assist families in providing care for related children so that those children need not come into the state's foster care system.

REPORT: A written report by the foster care review board as provided in T.C.A. § 37-2-406 or by the department of children's services or by an agency having custody of the child. T.C.A. § 37-2-402.

REVIEW HEARING/ 90-DAY AND 6- MONTH REVIEW/ PERIODIC HEARING: Court proceedings which take place after disposition in which the court reviews the status of a case, examines the progress made by the parties since the dispositional hearing, provides for correction and revision of the case plan, and makes sure that cases progress and that children spend as little time as possible in temporary placement.

SETTLEMENT CONFERENCE: A hearing set aside prior to the adjudication in which the court convenes the parties with the goal of determining whether the case may be resolved without a contested trial.

SIBLINGS: Persons sharing a common biological or legal parent, including brothers, sisters, stepbrothers and stepsisters, etc.

STATUS OFFENSES: In juvenile law, a category of offenses which, if committed by an adult, would not be considered a violation of the law, such as truancy, unruly and curfew violations.

SUBSTANTIAL COMPLIANCE/NONCOMPLIANCE: In juvenile court, refers to the parent's standard of conformity with his or her responsibilities in the permanency plan. Substantial compliance is the minimum standard for parents' conformity under which a child may be returned to the home. Substantial noncompliance with the plan is a ground for termination of parental rights. T.C.A. § 36-1-113(g)(2).

TANF: Temporary Assistance to Needy Families is the federal financial assistance or "welfare" program. In Tennessee, it is called "Families First."

TENNCARE: A system of healthcare for Tennesseans who are Medicaid eligible or who lack access to health insurance. TennCare operates as a managed health care program.

TERMINATION OF PARENTAL RIGHTS HEARING: A formal proceeding usually sought by a state agency at the conclusion of dependency proceedings in which severance of all legal ties between parent and child is sought against the will of one or both parents, and in which the burden of proof must be by clear and convincing evidence.

TPR: See TERMINATION OF PARENTAL RIGHTS.

TRUANT: A child who willfully and unjustifiably fails to attend school when attendance is required by law. Truancy is a punishable offense within the juvenile system in some states and, in others, it is the basis of a petition for a child in need of services.

UNRULY CHILD: Child in need of treatment and rehabilitation who habitually and without justification is truant; who is habitually disobedient of the reasonable and lawful commands of the child's parent or guardian to the degree that the child's health and safety are endangered; who commits an offense applicable only to a child; is away from the home or legal placement without consent of parents or guardians ("runaway"). T.C.A. § 36-1-102(23)(A).

VOLUNTARY SURRENDER: In juvenile court, a legal process by which a parent intentionally relinquishes his or her parental rights.

YOUTH SERVICE OFFICER: A position established by the county to assist the juvenile court. Depending upon the jurisdiction, the YSO receives and examines complaints of child dependency, delinquency and status offenses; counsels children and their families; keeps records and transmits information as required by government entities; investigates, reports and makes recommendations to the juvenile court; makes appropriate referrals to public and private agencies; and makes predisposition studies and submits reports and recommendations to the court as required. T.C.A. § 37-1-106.

YSO: See YOUTH SERVICE OFFICER.

REASONABLE EFFORTS CHECKLIST

A thorough review might include, but is not limited to, the following elements:

- When did the agency first have contact with the family?
- Did the agency identify problems that placed the child at risk of harm?
- Did the agency assess the family to determine what services or other supports were necessary to remedy the problems?
- Did the agency provide the services determined to be necessary?
- Did the family request additional services?
- Did the agency provide those services to the family?
- Did the family accept services provided by the agency?
- Did any of these services remedy the problems?
- If the services did not remedy the problems, were additional services tried?
- Were any services suggested but not provided because they were unavailable?
- If services were unsuccessful, why?
- What other services designed to address these problems are available in the community that the agency has not provided?
- Why were these services not provided?
- Was there an emergency situation in which the child could not be protected without separation from the family prior to providing services?
- If so, what services did the agency consider providing as an alternative to separation from the family?
- Since the placement of the child in out-of-home care, has the agency provided services aimed at reunification? If not, why not?
- Have these services been successful?
- Does the agency have a plan for providing services aimed at reunification? If not, why not?
- Has the agency considered the family's requests in developing these services?
- Could the child be returned if appropriate services were provided?

TABLE OF REQUIRED HEARINGS FOR JUVENILE DEPENDENCY CASES			
HEARING	TIMING	PURPOSE	CONDUCTED BY
Emergency Removal/ Preliminary Hearing T.C.A. 37-1-128	Within 72 hours of child's removal	To determine if there is <u>probable cause</u> to believe that the child is abused or neglected as defined by law. Court must find that the child is in immediate danger and that there is no less restrictive alternative to the removal.	Court -- formal hearing with notice to parties and counsel
Initial Draft of Permanency Plan T.C.A. 37-2-403	Within 30 days of foster care placement	To document what efforts are required by DCS and the family to reunify the family or to accomplish the objectives served by the child's removal. The goal identified in the Plan may be family reunification, permanent placement with a relative, adoption, or planned permanent living arrangement. Concurrent goals may be appropriate.	DCS . All parties and their counsel should be present.
Adjudication T.C.A. 37-1-128 T.C.A. 37-1-129 T.C.A. 37-1-166	Within 30 days of removal or filing of petition if child not removed; not more than 90 days	Trial on the allegations of abuse and neglect found in petition, by a <u>clear and convincing</u> evidentiary standard. Court also determines if DCS has made reasonable efforts to prevent removal of child and/or to reunify family.	Court -- formal hearing with notice to parties, attorneys and foster parents
Disposition T.C.A. 37-1-129	Within 15 days of adjudication if child has been removed; 90 days if child not removed	To determine who shall have temporary custody of child while reasonable efforts are made to reunify family (if that is the goal). <u>Evidentiary standards relaxed</u> . Court reviews services and the parties' progress on the permanency plan.	Court -- formal hearing with notice to parties, attorneys and foster parents
Ratification of Permanency Plan T.C.A. 37-2-403	Within 60 days of foster care placement	Court reviews the Permanency Plan drafted by DCS and ratifies it or asks for modifications. Parents are provided opportunity to comment and to sign a statement of responsibilities.	Court -- formal hearing with notice to parties
Status Reviews -- 90-day -- 6-month T.C.A. 37-2-404 T.C.A. 37-2-406	Within 90 days of foster care placement and every 6 months thereafter	To review the progress of all parties toward the goals specified in the Permanency Plan and to assess the appropriateness of the Plan: parents' compliance, child's safety, and the timely provision of services by DCS.	Court or FCRB . Requires notice to parties, attorneys and foster parents
Permanency Hearing T.C.A. 37-2-409	Within 12 months of foster care placement (formerly 18 months)	Court makes a permanency decision for the child, based upon the progress of the family under the terms of the permanency plan. Court determines if DCS has made reasonable efforts to reunify family (if that is the goal).	Court -- formal hearing with notice to parties, attorneys and foster parents

Timeline of Major Federal Child Abuse/Neglect Policy Enactments*

In some areas of public policy for children – e.g., education and juvenile justice – states and localities have been the primary shapers of policy (and the federal role is relatively modest and specialized). However, in child abuse and neglect policy, the federal government has played a defining role. That role has changed over time, as societal views about preferred approaches to addressing child abuse/neglect have shifted.

1960s: Aid to Families with Dependent Children (AFDC)

- Federal government began to use AFDC to reimburse states for some of the costs of foster care for kids whose families were AFDC-eligible

1974: Child Abuse Prevention and Treatment Act (P.L. 93-247)

- Provided grants to improve states' capacity to prevent, identify and address child abuse and neglect
- Required that, in order to get funding, states must have mandatory reporting laws, prompt investigations of abuse/neglect reports, etc.

1978: Indian Child Welfare Act (P.L. 95-608)

- Recognized that too many Native American children were being removed from their families and tribes by states
- Required that tribes play a greater role in placement decisions affecting abused and neglected Native American children

1980: Adoption Assistance and Child Welfare Act (P.L. 96-272)

- Recognized that kids stayed in foster care too long
- Required that "reasonable efforts" be made to prevent unnecessary foster care placement and to reunify children with their families
- Required that each child in foster care have a plan for achieving a permanency goal (return home, adoption, independent living, etc.), and periodic court and administrative hearings to check on progress towards the goal
- Provided support for families adopting special needs children

1993: Family Preservation and Support Act (P.L. 103-66)

- Recognized that kids were *still* staying in foster care too long: almost all of the federal funds paid the costs of states' placements (in foster care or special needs adoptive homes), rather than services to kids and families
- Established a new funding stream for states to support services to prevent unnecessary foster care placement and to return children home (when appropriate)

1994: Multi-Ethnic Placement Act (P.L. 104-188)

- Recognized that placements for some children were being delayed because there were not enough foster and adoptive families of the same racial/ethnic group
- Prohibited delay or denial of foster care or adoptive placement on the basis of race, color or national origin of the child or prospective family

1997: Adoption and Safe Families Act (P.L. 105-89)

- Recognized that some interpretations of the "reasonable efforts" requirement and the "Family Preservation and Support" approach had left children in dangerous homes, and/or delayed their progress toward adoption (when appropriate)
- Set strict deadlines for states to file for "termination of parental rights" (necessary for adoption), made explicit the primacy of "child safety" in placement and permanency decisions, modified the family preservation program to also support adoption services (changing its name to Promoting Safe and Stable Families), and established new adoption incentive payments to states

1999: Foster Care Independence Act (P.L. 106-169)

Expanded and enhanced the "Independent Living" program, to improve the outcomes of children aging out of foster care

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